
United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(In Three Volumes.)

JAMES T. BARRON,

Appellant,

vs.

CLAIRE J. ALEXANDER,

Appellee.

VOLUME I.

(Pages 1 to 256, Inclusive.)

Upon Appeal from the United States District Court for
the District of Alaska, Division No. 1.

FILED

SEP 18 1912

No. 2171

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Appellee.

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(Pages 1 to 256, Inclusive.)

Upon Appeal from the United States District Court for
the District of Alaska, Division No. 1.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Appellant's Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, in the State of California, under the appeal heretofore perfected in the above-entitled court and cause, and include in said transcript the following proceedings, pleadings and papers on file with you, therein, to wit:

1. Original Complaint;
2. Summons;
3. Restraining Order Dated March 22, 1911;
4. Original Answer;
5. Motion to Strike Part of Original Answer;
6. Order Denying Motion to Strike;
7. Order Dissolving Temporary Restraining Order Mch. 30, 1911;
8. Reply to Original Answer;
9. Amended and Supplemental Complaint;

10. Answer to Amended and Supplemental Complaint;
11. Reply to Answer to Amended and Supplemental Complaint;
12. Order Refusing to Set Aside Opinion and Grant a New Trial;
13. ~~Order Refusing and Denying Plaintiff's Tendered Findings of Fact & Conclusions of Law;~~
14. Defendant's Tendered Findings of Fact and Conclusions of Law;
15. ~~Order Made by Court in Regard to Tendered Findings of Defendant;~~
16. Findings of Fact and Conclusions of Law Made by the Court;
17. Order Denying Motion to Set Aside Findings of Fact and Conclusions of Law Made by the Court;
18. Order Made by Court July 1st, 1912, Overruling Tendered Findings of Plaintiff and Allowing Exceptions to Findings Made by the Court;
19. Decree Made by the Court;
20. Motion to Make Certain Exhibits Part of Record and Permitting Transfer of Some of Original Exhibits to [1*] to the Clerk of Circuit Court of Appeals;
21. Order Made by Court Making Exhibits Part of Record and Ordering Transfer of Part of Original Exhibits to Clerk of Circuit Court of Appeals;

*Page-number appearing at foot of page of original certified Record.

22. Notice of Settling Bill of Exceptions, etc., and Return of U. S. Marshal Attached Thereto Showing Service of Same;
23. Plaintiff's Assignment of Errors and Certificate of U. S. Marshal Attached Thereto Showing Service of Same;
24. Petition for Appeal and Order Attached Thereto Allowing Same;
25. Order Setting Amount of Bond on Appeal;
26. Bond on Appeal;
27. Citation;
28. Order Extending Return Day Under Citation;
29. Proof of Service of Citation;
30. Bill of Exceptions;
31. Stipulation Filed July 24, 1912;
32. Order Re Forwarding Original Exhibits Filed July 24, 1912;
33. Stipulation August 1, 1912.

WINN & BURTON,

Attorneys for Plaintiff and Appellant.

[Endorsed]: Original. No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire J. Alexander, Defendant. Praecipe. John R. Winn, Newark L. Burton, Attorneys for ————. Office: Juneau, Alaska, Office ————. Filed Jul. 12, 1912. E. W. Pettit, Clerk. By H. Malone, Deputy. [2]

*In the United States District Court for the District
of Alaska, Div. No. 1, at Juneau.*

No. —.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Complaint.

To the Honorable THOS. R. LYONS, Judge of the
Above-entitled Court.

Comes now the above-named plaintiff, by his at-
torneys, Winn & Burton, and complaining of the
above-named defendant for cause of action, alleges:

1.

1st. That on, to wit, prior to June, 1909, one V.
A. Robertson, located and had surveyed, under the
Soldiers' Additional Homestead Laws pertaining to
the District of Alaska, the following described tract
or parcel of land, situate, lying and being on the
south shore of Chatham Straits, about five miles
north of Hawk Inlet, in the District of Alaska, and
more particularly described as follows, to wit,
namely:

Situate on Chatham Strait about two miles south
of Funter Bay, Alaska:

Beginning at Cor. No. 1 M. C., from whence U. S.
L. M. No. 804 bears S. 74° 02' W. 5.78 chains; thence
meandering shore line of Chatham Strait, 1st course,
S. 80° 51' E. 6.15 chains; 2d course, N. 86° 05' E.

5.89 chains; to Cor. No. 2; thence north 4.36 chains to Cor. No. 3; thence west 11.95 chains to Cor. No. 4; thence S. 3.78 chains to Cor. No. 1 M. C., place of beginning.

Area embraced within said survey, 5.27 acres. [3]

2.

Thereafter, and on, to wit, the 16th day of June, 1909, the official plat and the field-notes of said above-described lot or parcel of land were approved by the Surveyor-General for the District of Alaska, and said plat so approved as aforesaid was forwarded by the Surveyor General to the Local Land Office at Juneau, Alaska, and said survey is designated and known as U. S. Nonmineral Soldiers' Additional Survey No. 804.

3.

That on, to wit, *on* or about the first day of March, A. D. 1911, for value received, the said V. A. Robertson conveyed by good and sufficient deed in writing the above-described tract, lot or parcel of land embraced within said U. S. Nonmineral Survey No. 804 aforesaid to James T. Barron, the plaintiff herein; that said James T. Barron is now the owner of said land embraced within said U. S. Nonmineral Survey No. 804.

4.

That the purpose and object in surveying said land and having the plat and field-notes thereof approved by the surveyor-general is to have the same patented under the laws of the United States and the regulations of the Land Department; that said James T. Barron and his predecessor in interest, in

having said survey made intend to make all necessary proof in order to obtain a U. S. Patent for the same and to purchase the land from the United States Government by means of Soldiers' Additional Scrip.

5.

That at the time of the entry upon said land by the plaintiff and his predecessor in interest, the same was Government land, unoccupied, unappropriated and open to entry, and the approval of said surveyor-general of the District of Alaska is proof that such land was so open to entry, as aforesaid. [4]

6.

That said land embraced in said survey No. 804 borders upon the navigable waters of Chatham Straits in the North Pacific Ocean, in the District of Alaska.

7.

That on, to wit, *on* or about the 14th day of March, 1911, the above-named defendant, his agents, servants and employees, entered upon the above-described survey No. 804 and upon the navigable waters directly in front of said described land with a pile-driver and piles and commenced to drive piles upon the tide lands and waters immediately in front of and abutting upon the piece or parcel of land above described and embraced within said survey No. 804; that ever since said time they have been and they are now driving piles upon said tide land and water immediately in front of and abutting said piece or parcel of land; that the driving of said piles in front of plaintiff's land as aforesaid interferes

with and obstructs his free egress and ingress to the navigable waters of said Chatham Straits, and his right of free access to deep and navigable waters of said Chatham Strait.

8.

Plaintiff further alleges the fact to be that the driving of such piles as aforesaid in the manner herein described is done by the defendant knowingly, maliciously and wrongfully and with full knowledge of plaintiff's rights, and that said defendant will proceed to complete his work of driving such piles unless restrained by this Honorable Court; that the said piling so driven by the defendant as aforesaid is evidently for the purpose of constructing a fish-trap.

9.

That plaintiff is informed and believes that the defendant does not own any upland on or near or in the vicinity of said fish-trap that he is constructing as aforesaid. [5]

10.

That plaintiff further alleges that inasmuch as the defendant has commenced the building and constructing of said trap in front of plaintiff's land out in and to and over the waters of Chatham Straits to deep water, and is continuing and will continue to do so unless restrained by this Honorable Court, it is imperative that action be taken at once by this Honorable Court without notice to said defendant or any of his employees, servants or agents, and that a temporary restraining order or order to show cause be granted herein without notice, for the rea-

son that if notice is given to said defendant, his agents, servants or employees, they will proceed at once to complete the construction and erection of said trap and complete the same before any relief can be granted herein.

11.

That by reason of the facts herein stated an emergency exists for the granting of a temporary injunction or restraining order pending this action, without notice to said defendant; that the plaintiff has no plain, speedy and adequate remedy at law.

WHEREFORE, plaintiff prays judgment as follows: That a temporary restraining order be granted herein, restraining the defendant, his servants, agents and employees, from building, erecting, constructing or improving upon the tide lands or navigable waters of Chatham Straits immediately in front of the tract, parcel or plat of land embraced within the exterior boundary lines of said Survey No. 804, or in any wise interfering with the plaintiff's right of possession or use of said tide lands or grounds between the uplands owned by this plaintiff and the navigable water of Chatham Straits; also to be enjoined and restrained from in any wise interfering with the plaintiff's right of access to and from his uplands to deep and [6] navigable waters of said Chatham Straits pending this action.

2d. That said defendant, his agents, servants and employees, be restrained in the manner aforesaid until the respective rights of the said parties plaintiff and defendant be determined by this proceeding; and that upon final hearing said injunction

be made permanent; and for his costs and disbursements herein.

WINN & BURTON,
Attorneys for the Plaintiff.

United States of America,
District of Alaska,—ss.

I, Fred Barker, being first duly sworn, on oath, say: That I am the agent and superintendent of plaintiff in the above-entitled action; that I have read the foregoing . . . and know the contents thereof and believe the same to be true; that I make this verification because the plaintiff is without the District of Alaska.

FRED BARKER.

Subscribed and sworn to before me this 22d day of March, A. D. 1911.

[Notarial Seal] NEWARK L. BURTON,
Notary Public for Alaska.

[Endorsed]: Original. No. 840. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Complaint. Filed Mar. 22, 1911. H. Shattuck, Clerk. By H. Malone, Deputy. John R. Winn, Newark L. Burton, Attorneys for _____ Office; Juneau, Alaska. Office No. _____ [7]

*In the District Court for the District of Alaska,
Division No. 1.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Summons.

To Claire Alexander, the Above-named Defendant,
———, Defendant, Greeting:

IN THE NAME OF THE UNITED STATES OF AMERICA, You are hereby commanded to be and appear in the above-entitled court, holden at Juneau, in said Division of said District, and answer the complaint filed against you in the above-entitled action within thirty days from the date of the service of this summons and a copy of the said complaint upon you, and, if you fail so to appear and answer, for want thereof the plaintiff will apply to the court for the relief demanded in said complaint, a copy of which is served herewith.

AND YOU, the United States Marshal of Division No. 1 of the District of Alaska, or any deputy, are hereby required to make service of this summons upon the said defendant and each of them as by law required, and you will make due return hereof to the Clerk of this Court within forty days from the date of delivery to you, with an indorsement hereon of your doings in the premises.

IN WITNESS WHEREOF, I have hereto [8]
set my hand and affixed the seal of the above court
this twenty-second day of March, A. D. 1911.

[Court Seal]

H. SHATTUCK,
Clerk.

By H. Malone,
Deputy.

United States of America,
District of Alaska,
Division No. One,—ss.

I hereby certify that I received the within sum-
mons on the 22d day of March, 1911, and that I
served the same at Funter Bay, Alaska, on the 23d
day of March, 1911, by delivering a copy thereof
prepared and certified by N. L. Burton, attorney for
the plaintiff herein named, together with a copy of
the complaint in said action also prepared and certi-
fied by the said N. L. Burton, to the within named
defendant, Claire Alexander, personally and in per-
son.

H. L. FAULKNER,
United States Marshal.
By W. D. MacMillan,
Office Deputy.

MARSHAL'S FEES:

1 service.....	\$ 3
Expense of trip, Juneau to Funter Bay.....	35.00
	<hr/>
	38.00

Fees paid by plaintiff.

[Endorsed]: Original. No. —. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Summons. Filed Mar. 24, 1911. H. Shattuck, Clerk. By H. Malone, Deputy. John R. Winn, Newark L. Burton, Attorneys for ————. Office: Juneau, Alaska. Office No. ————. [9]

In the United States District Court, District of Alaska, Division No. 1, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Restraining Order.

United States of America, to Claire Alexander, the Above-named Defendant, Greeting:

The above-named plaintiff having filed his complaint in this court against the above-named defendant praying for an injunction against said defendant requiring him to refrain from certain acts in said complaint described and hereinafter more particularly mentioned, upon reading said complaint and affidavit filed in connection therewith in this action, both of which are duly verified and sworn to, and it satisfactorily appearing to this Court therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor;

NOW, THEREFORE, you, the said Claire Alexander, your agents, servants and employees, and each and every of you, are strictly commanded until further order of this Court to absolutely desist and refrain from building or erecting, improving or constructing upon any of the tide lands or water in front of the property and land embraced in U. S. Nonmineral Survey No. 804 belonging to and owned by the plaintiff herein, which said land is more particularly described as follows, viz.:

Situate on Chatham Strait, District of Alaska, about two miles south of Funter Bay, Alaska: Beginning at Cor. No. 1 M. C., from whence U. S. L. M. No. 804 bears S. $74^{\circ} 02' W.$ 5.78 chains; thence, 1st course, meandering shore Chatham Strait, S. $80^{\circ} 51' E.$ 6.15 chains; 2d course, N. $86^{\circ} 05' E.$ 5.89 chains to Cor. M. C. No. 2; thence North 4.36 chains to Cor. No. 3; [10] thence West 11.95 chains to Cor. No. 4; thence S. 3.78 chains to Cor. No. 1, place of beginning. Area, 5.27 acres.

AND you are hereby required to show cause before this court on the 27th day of March, 1911, at the hour of 10 o'clock A. M., why this order of restraint should not continue and remain in full force and effect against you during the pendency of this action as prayed for in the complaint of plaintiff filed herein, a copy of which complaint will be served upon you.

This order to go into effect upon the filing by plaintiff of their undertaking with one or more sureties to the effect that they will pay all costs and disbursements that may be decreed to defendant,

and such damages, not exceeding the sum of \$1500.00 dollars, as they may sustain by reason of the said order, if the same be wrongful or without sufficient reason or cause.

Done in open court this 22d day of March, A. D. 1911.

THOMAS R. LYONS,
Judge.

United States of America,
District of Alaska,
Division No. One,—ss.

I hereby certify that I received the within order on the 22d day of March, 1911, and that I served the same at Funter Bay, Alaska, on the 23d day of March, 1911, by delivering a full, true and correct copy thereof to the within named defendant, Claire Alexander, personally and in person.

Dated at Juneau, Alaska, March 24, 1911.

H. L. FAULKNER,
United States Marshal.
By W. D. MacMillan,
Office Deputy.

Marshal's Fees: 1 service, \$3.

Fees paid by plaintiff. [11]

[Endorsed]: Original. No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Restraining Order. Filed Mar. 24, 1911. H. Shattuck, Clerk. By H. Malone, Deputy. John R. Winn. Newark L. Burton, Attorneys for ————. Office: Juneau, Alaska, Office No. ——. [12]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Answer.

Comes now Claire Alexander, the defendant herein, and answering plaintiff's complaint, alleges:

I.

Answering paragraphs I, II, III, IV and V of said complaint, defendant alleges that he has not sufficient knowledge or information to form a belief as to the truth of the allegations therein; therefore he denies the same.

II.

Answering paragraph VI of said complaint, defendant admits the same.

III.

Answering paragraph VII of said complaint, defendant admits that he has driven piles and constructed a fish-trap in the navigable waters in Chatham Strait in front of land which he is informed plaintiff claims and which is called Nonmineral Survey No. 804. Further answering said paragraph No. VII, defendant denies that on March 14, 1911, or at any other time, he or his agents, servants, or

employees or any of them ever entered upon said Survey No. 804; denies that he or any of his agents, servants or employees ever entered upon the tide lands in front of said Survey No. 804 with a pile-driver and piles and commenced to drive piles upon said tide lands; [13] denies that ever since that time they or any of them have been and are now driving piles upon said tide lands immediately in front of and abutting said piece of land called Survey No. 804; denies that the driving of said piles in front of plaintiff's land interferes with and obstructs plaintiff's free egress or ingress to the navigable waters of Chatham Strait or his right of free access to deep and navigable waters of Chatham Strait.

IV.

Answering paragraph No. VIII of said complaint, defendant admits that he has driven piles in the navigable waters of Chatham Strait in front of said Survey No. 804 for the purpose of constructing a fish-trap, and that he has constructed said trap in said waters and except as herein admitted, defendant denies each and every allegation and each and every part thereof in said paragraph No. VIII contained.

V.

Answering paragraph No. IX of said complaint, defendant admits the same.

VI.

Answering paragraph No. X of said complaint, defendant denies the same and each and every part thereof.

VII.

Answering paragraph No. XI of said complaint, defendant denies the same and each and every part thereof.

And as an affirmative defense to the matters and things charged in said complaint, defendant alleges:

A.

That he is a citizen of the United States, over twenty-one years of age and a resident and inhabitant of the territory of Alaska; that defendant has for many years been engaged in the business of salmon fishing in the waters of Southeastern [14] Alaska; that he and his associates are now engaged in such business and have invested large sums of money in steamboats, fishtraps, and other property and appliances used in their said business.

B.

That Chatham Strait is a large arm of the Pacific Ocean, navigable for all sizes of vessels, and is about two hundred miles in length and has an average width of about fifteen miles; that at the place where defendant has constructed his fish-trap hereinafter described said Chatham Strait is about twelve miles in width; that in all parts of said Strait the ocean tides regularly ebb and flow; that the waters of said Chatham Strait abound in fish, salmon being especially abundant and said waters constitute a fishery, free, public and common to all persons.

C.

That on or about the 1st day of Nov., 1910, defendant and others who are interested in business with

him located a place in said Chatham Strait about two miles south of Funter Bay on the shores of Admiralty Island and in the open navigable waters of said Strait for the purpose of constructing a fish-trap for taking salmon; that said place so located by defendant, is a valuable fish-trap site for the reason that large schools of salmon abound in the immediate waters; that the place so selected and located by defendant as aforesaid, was unoccupied and unappropriated and was not being used by anyone engaged in the fish business or in any other kind of business except commerce and navigation; that it was open, navigable water; that after so locating said place as aforesaid, defendant and his associates made soundings and thereafter, to wit, on Mch. 14, 1911, at great expense procured piles [15] and a pile-driver and steamboat, all of which defendant used in the construction and erection of a fish-trap upon the location above mentioned; that defendant drove said piles and constructed said trap entirely in the open, unoccupied, unappropriated, navigable waters of said Chatham Strait below low-tide lands of Admiralty Island; that the place where said trap was so constructed and driven by defendant is, as defendant is now informed, directly in front of land claimed by the plaintiff and called Nonmineral Survey No. 804.

D.

Defendant further alleges that neither in the building and construction of his fish-trap at the place above described, nor in the operation of the same, has he attempted to interfere with the plaintiff or

anyone else; that he has not threatened to interfere nor attempted to interfere, and does not now intend to interfere with plaintiff in the use of his *his* land or property, nor his rights to fish in the navigable waters of Chatham Straits; that defendant, in the location of said trap site and in the lawful pursuit of his right to fish in the navigable waters of the ocean where his said trap is constructed, has expended more than Four Thousand (\$4,000) Dollars, and the value of his said trap, including the profits which defendant expects to make during the season of 1912, is more than Ten Thousand (\$10,000). Dollars.

E.

That plaintiff is not engaged in fishing with traps or any other devices or appliances in or near the said place where defendant has constructed his said trap, and the acts of the defendant do not interfere with, damage or effect the plaintiff in any manner; that the defendant's said fish-trap in no manner obstructs plaintiff's right of access [16] to navigable water, nor his right of ingress or egress over the shore or tide land in front of the upland which he claims and which is called Nonmineral Survey No. 804.

F.

Defendant further alleges that the land covered by Survey No. 804 and claimed by plaintiff was at the time defendant drove his said trap and is now wholly unoccupied, unimproved and uncultivated; that there are no canneries or cannery buildings or wharves of any kind located on said land, and no

buildings or improvements of any kind or description located on said land, except one small unoccupied board shack, costing not to exceed Fifteen (\$15) Dollars; that said land is covered with a dense growth of forest; that said land so claimed by plaintiff is of no value whatever for agricultural purposes or any other purpose.

Defendant verily believes that plaintiff has located and is holding said land for the sole and only purpose of attempting to prevent all other persons from exercising their right of fishing in the navigable waters in front of said land.

WHEREFORE, having fully answered, defendant prays that the temporary restraining order heretofore made be dissolved and that defendant be dismissed with his reasonable costs.

Z. R. CHENEY,
Attorney for Plaintiff.

United States of America,
District of Alaska,—ss.

I, Clarence J. Alexander, being first duly sworn, on oath, say: That I am the defendant in the above entitled action; that I have read the foregoing Answer and know the contents [17] thereof, and believe the same to be true; that I make this verification because

CLARENCE J. ALEXANDER.

Subscribed and sworn to before me this twenty-fifth day of March, 1911.

[Notarial Seal]

Z. R. CHENEY,
Notary Public for Alaska.

Due service of the within is admitted this 25 day of Mch., 1911.

WINN & BURTON,
Attorneys for Plaintiff.

[Endorsed]: No. 840. In the District Court for Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Answer. Filed Mar. 27, 1911. H. Shattuck, Clerk. By H. Malone, Deputy. Z. R. Cheney, Attorney for Deft. Office, Juneau, Alaska, Lewis Block. [18]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Motion to Strike.

Comes now the above-named plaintiff by his attorneys, Winn & Burton, and moves the Court to strike from the Answer of defendant herein all of the Affirmative Defense of said defendant, for the reason and upon the following grounds, viz.:

I.

Because said Affirmative Defense does not set up any new matter constituting a defense, and any defense appearing therein can only be made by a denial

of the material allegations contained in the complaint of plaintiff filed herein.

WINN & BURTON,
Attorneys for Plaintiff.

Due service of a copy of the within motion is admitted this 27 day of March, 1911.

Z. R. CHENEY,
Attorney for Deft.

[Endorsed]: Original. No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Motion. Filed Mar. 27, 1911. H. Shattuck, Clerk. By H. Malone, Deputy. John R. Winn, Newark L. Burton, Attorneys for _____ . Office: Juneau, Alaska, Office No. ____.

[19]

[Order Denying Motion to Strike, etc.]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Hearing.

On this day this cause coming on regularly for hearing upon the Order to Show Cause heretofore issued herein, the plaintiff being represented by Newark L. Burton, Esquire, and the defendant being

represented by Z. R. Cheney, Esquire, the following proceedings were had, to wit:

The motion of plaintiff to strike from the answer of defendant herein all of the affirmative defense, after argument had by counsel, and the Court being fully advised in the premises, is denied. Whereupon Plaintiff's Exhibits "A" and "B" are offered and received in evidence.

Whereupon the defendant, Claire Alexander, is sworn and testifies in his own behalf, and Defendant's Exhibit 1 is introduced and admitted in evidence.

Thereupon it is agreed between the parties hereto that the hearing herein be reported and that each party pay one-half of the cost of reporting the same.

Whereupon the following-named witnesses were sworn and testified in behalf of the defendant, to wit: J. W. Kilgore, Captain L. Williams, N. C. Gallagher, W. A. Douglas. Thereupon the defendant is recalled and the defense rests.

Whereupon Captain R. H. Mason is sworn and testifies on behalf of plaintiff, and the further hearing of this cause is continued until to-morrow morning at ten o'clock.

Dated Monday, March 27, 1911.

(Civil Journal, p. 47.)

THOMAS R. LYONS,
Judge. [20]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

C. J. ALEXANDER,

Defendant.

**Order [Dissolving Preliminary Restraining Order,
etc.]**

This matter came regularly on for hearing upon affidavits and oral testimony submitted by the respective parties, and now the Court being fully advised in the premises, and after hearing argument by counsel,

IT IS ORDERED that the preliminary restraining order heretofore made on March 22, 1911, be, and the same is hereby, dissolved; to all of which plaintiff excepts, and exception is allowed.

IT IS FURTHER ORDERED that the order heretofore made on March 28, 1911, restraining plaintiff from erecting any structures in front of his Non-mineral Survey No. 804, or otherwise interfering with the fish-trap of defendant, be and the same is hereby dissolved.

Done in open court this 30th day of March, 1911.

THOMAS R. LYONS,
Judge of the District Court.

[Endorsed]: No. 840-A. In the District Court of the United States for the Div. No. 1 of Dist.

Alaska. James T. Barron vs. C. J. Alexander. Order. Filed Mar. 30, 1911. H. Shattuck, Clerk. By C. Z. Denny, Asst. [21]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Reply.

Comes now the above-named plaintiff by his attorneys, Winn & Burton, and replying to the Affirmative Defense set forth in the Answer of the defendant herein, denies and states as follows:

I.

Replying to paragraph A of said Affirmative Defense in the Answer of the defendant herein, plaintiff has not sufficient knowledge or information upon which to base a belief, and therefore denies each and every allegation contained in said paragraph.

II.

Replying to paragraph D of said Affirmative Defense set forth in said Answer of defendant herein, plaintiff denies each and every allegation in said paragraph contained.

III.

Replying to paragraph E of said Affirmative Defense set forth in said Answer of defendant herein,

plaintiff denies that the acts of the defendant do not interfere with, damage or affect the plaintiff in any manner; denies that the defendant's said fish-trap in no manner obstructs plaintiff's right of access to navigable water, nor his right of ingress or egress over the shore or tide land in front of the upland which he claims and which is called Nonmineral Survey No. 804; that on the contrary this plaintiff alleges as in his complaint herein, that said fish-trap [22] does interfere with, damage and affect the plaintiff and obstructs plaintiff's right of access to navigable water of Chatham Strait, and his right of ingress and egress over the shore or tide land in front of his upland embraced within Nonmineral Survey No. 804.

IV.

Replying to paragraph F of said Affirmative Defense set forth in said answer of defendant herein, plaintiff denies that said upland embraced within said U. S. Nonmineral Survey No. 804 was at the time defendant drove his said trap and is now wholly unoccupied, but alleges as set forth in his complaint herein, that said land was surveyed by plaintiff under 'Soldiers' Additional Scrip Act and plaintiff has in his possession the necessary scrip to purchase said land under said Act. Denies that said land embraced within said survey No. 804 is of no value whatever for any purpose, and alleges that such land at the time the same was taken up by the plaintiff herein was open, unoccupied, unappropriated public domain subject to location and entry under the laws of the United States applicable to public lands in the

District of Alaska, and subject to entry under the Soldiers' Additional Scrip Act.

WHEREFORE, plaintiff prays for the relief prayed for in his Complaint filed herein.

WINN & BURTON,

Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

I, James T. Barron, being first duly sworn, on oath say: That I am the plaintiff in the above-entitled action; that I have read the foregoing Reply and know the contents thereof and believe the same to be true.

JAMES T. BARRON. [23]

Subscribed and sworn to before me this nineteenth day of July, A. D. 1911.

[Notarial Seal] NEWARK L. BURTON,
Notary Public for Alaska.

[Endorsed]: Original. No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Reply. Filed Jul. 30, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. John R. Winn, Newark L. Burton, Attorneys for _____ . Office: Juneau, Alaska, Office No. _____. [24]

*In the United States District Court for the District
of Alaska, Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Amended and Supplemental Complaint.

To the Honorable THOS. R. LYONS, Judge of the
above-entitled court:

Comes now the above-named plaintiff, by his attorneys, Winn & Burton, and consent of the Court first had and obtained, files this his Amended and Supplemental Complaint, and complaining of the above-named defendant, for cause of action alleges:

I.

That on, to wit, prior to June, 1909, one V. A. Robertson located and had surveyed under the Soldiers' Additional Homestead Laws, applicable to Alaska and pertaining to the acquisition of title to Government land in the District of Alaska, that certain piece or parcel of land, lying and being on the south shore of Chatham Straits, a navigable arm of the north Pacific Ocean, about five (5) miles north of Hawk Inlet in the District of Alaska, and more particularly described as follows, to wit:

Situate on Chatham Strait about two miles south of Funter Bay, Alaska:

Beginning at Cor. No. 1 M. C., from whence U.

S. L. M. No. 804 bears S. 74° 02' W. 5.78 chains; thence meandering shore line of Chatham Strait, 1st course, S. 80° 51' E. 6.15 chains; 2nd course, N. 86° 05' E. 5.89 chains to Cor. No. 2; thence North 4.36 chains to Cor. No. 3; thence West 11.95 chains to Cor. No. 4; thence S. 3.78 chains to Cor. No. 1 M. C., place of beginning. Area embraced within said survey, 5.27 acres. [25]

II.

That at the time of the location and survey of said piece or parcel of land by the said Robertson, the same and each and every portion thereof was United States Government land unoccupied and unappropriated and open to entry under the Soldiers' Additional Homestead Laws, applicable to said District of Alaska. That on the 16th day of June, 1909, the official plat and field-notes of said land and survey thereof were approved by the Surveyor-General of the District of Alaska, and said plat and field-notes so approved, as aforesaid, were, as in such cases made and provided, forwarded by the Surveyor-General to the local U. S. Land Office at Juneau, Alaska, and is designated and known as U. S. Non-mineral Soldiers' Addition Survey, No. 804. That on or about the first day of March, A. D. 1911, for value received, the said V. A. Robertson conveyed by good and sufficient deed in writing the above described tract or parcel of land embraced within said U. S. Nonmineral Survey No. 804, aforesaid, to James T. Barron, the plaintiff herein, and said James T. Barron is now, and at all times mentioned herein has been, since said conveyance, the owner of the land embraced in said Survey No. 804.

III.

That since the purchase of said piece or parcel of land by this plaintiff, as aforesaid, said plaintiff has caused such proceedings to be had in the United States Land Office, aforesaid, that entry and final proof was made and submitted to said Land Office for United States patent to said lands embraced in said survey, and since the commencement of this action, final Receiver's Certificate has been issued by said U. S. Land Office to said plaintiff for said land embraced in said survey, and patent will soon be issued therefor. [26]

IV.

That this plaintiff now is, and at all times mentioned herein has been, the President of and largely interested in a corporation known as Thlinket Packing Company, owning and operating a large salmon cannery at Funter Bay, Alaska, a distance of about four (4) miles from the land embraced in said U. S. Survey No. 804; that said salmon cannery has a capacity to enable the packing of about three thousand (3,000) cases of salmon per day at the present time, and has been built up from time to time to its present size and capacity; that Chatham Strait, the arm of the Pacific Ocean upon which said land embraced in said Survey No. 804, contains navigable waters for all sizes of vessels, and that at all parts of said Strait, the ocean tides regularly ebb and flow and that the waters of said Chatham Strait abound in fish and especially salmon, and particularly is that part of the water of said Strait, immediately in front and upon which said land in said survey abuts, abundant with salmon, and said land is particularly

valuable for a fishing site when the way to it over the waters of said Chatham Strait is unobstructed, and ingress and egress to and from said land to deep water of said Chatham Strait is unobstructed in any manner; and said land embraced in said U. S. Survey No. 804, that on account of the winds and tides, and elements, it is necessary to have absolutely the water in front of said land left entirely unobstructed so that ingress and egress to and from said land can be had by either small or large steamers or water crafts. That it has at all times been the intention of this plaintiff to use said land embraced in said survey and the right of way out to deep water the entire width of said land as a fishing site and station, all of which is necessary to [27] have and hold in order for plaintiff to successfully carry on the cannery business in which he is engaged in connection with said Thlinket Packing Company, and that said plaintiff and said company have expended over Four Hundred Thousand (\$400,000) Dollars in the enterprise of fishing and canning salmon as aforesaid.

V.

That on or about the 14th day of March, 1911, the above-named defendant, his agents, servants and employees, entered upon the above-described Survey No. 804 and upon the said navigable waters directly in front of said described land without the knowledge or consent of this plaintiff and commenced to drive piles upon the tide land and waters immediately in front of and abutting upon the piece or parcel of land embraced in said Survey No. 804 at a

point indicated upon the blue-print and map hereto attached, indicated by the words "piles driven by Alexander on March 28th, 1911," which said blue-print or map is hereby referred to and hereto attached and made a part of this complaint. That about at this last mentioned date, said facts became known to this plaintiff and plaintiff forbade said defendant and his agents and employees from driving said piles and obstructing plaintiff's right of way out to deep water from his said uplands, but notwithstanding said fact, said defendant continued driving piles in the manner aforesaid and plaintiff immediately commenced this action and applied to this Court for a restraining order, and a temporary restraining order was granted herein but which was afterwards dissolved by this Court, but before said defendant had completed the driving of his piles for the completion of his fish-trap; that after the dissolution of said temporary restraining order, the said defendant continued the driving of piles for the completion of his said trap and the [28] lead thereto, as is indicated upon the map and blue-print hereto attached, which said lead to said trap is indicated on said blue-print by the following words, or along the line of the following words, "Showing line of lead at intersection with shore line," and did afterwards complete his said trap with pot, filler, heart and lead substantially as indicated upon said blue-print or map hereto attached, and did extend the lead of said trap from said pot, filler and heart, which are indicated on said blue-print by the words "Piles driven by Alexander," to the uplands of this plaintiff embraced in said U. S. Survey No. 804, all of which

was against the will and consent of this plaintiff and in direct violation of what defendant had testified to in this court in order to obtain a dissolution of the temporary restraining order hereinbefore referred to, and was knowingly and maliciously and wrongfully done by said defendant with full knowledge of plaintiff's rights, and knowing full well that it would entirely and completely cut off and obstruct plaintiff's right of way from his upland out to deep water and navigable waters of said Chatham Strait, and the same has entirely obstructed, cut off and rendered impossible plaintiff's ingress and egress to and from his land to deep and navigable waters of said Chatham Strait with gasoline boats, small steamers, and in fact any and all water crafts of any and all sizes except perhaps row boats, which has caused and is causing this plaintiff great irreparable damages, and this plaintiff has no speedy and adequate remedy at law.

VI.

That the temporary restraining order originally granted herein by this Honorable Court in favor of plaintiff and against the defendant was dissolved on motion of said defendant, and said dissolution was contested by this plaintiff for the reasons [29] herein stated, and for the reason that plaintiff at said time believed that defendant was going to complete his trap in such a manner as to obstruct plaintiff's access to deep and navigable waters from his upland, and in fact, cut off access thereto entirely, and by reason of the facts herein referred to and stated, an emergency exists for the granting of a per-

emptory and mandatory injunction.

WHEREFORE, plaintiff prays judgment as follows: That a peremptory and mandatory injunction be granted herein by this Honorable Court, ordering and directing, and commanding the said defendant to remove the obstruction and obstructions herein complained of, cutting off plaintiff's right of way to deep and navigable waters of Chatham Strait from his uplands contained in said U. S. Survey No. 804, or, that plaintiff be permitted to remove the same and each and every portion of said obstruction,

And second: That said defendant, his agents, representatives, employees and any and all persons holding by, thru or under him, and each and all of them, be forever restrained from interfering with plaintiff's right of possession or use of the tide lands and grounds immediately in front of his upland, and defendant also be restrained from in any wise interfering with plaintiff's right of way to and from his upland to deep and navigable waters of Chatham Strait; and for such other and further relief as to this Court may seem just and equitable, and for plaintiff's costs and disbursements herein.

WINN & BURTON,

Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

I, James T. Barron, being first duly sworn, on oath, say: That I am the plaintiff in the above-entitled action; that I have [30] read the foregoing Amended and Supl. Complaint and know the contents thereof, and believe the same to be true.

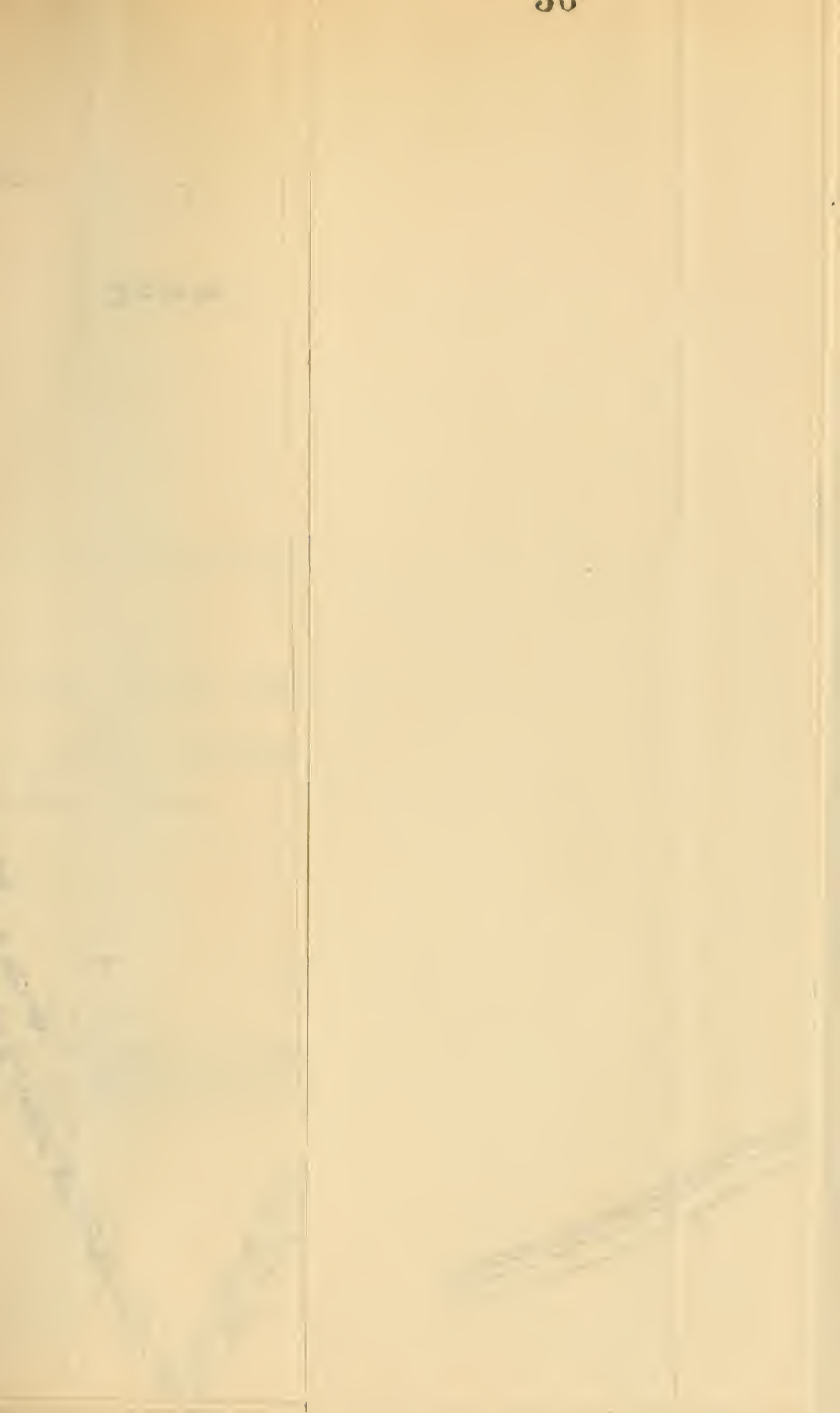
JAMES T. BARRON.

Subscribed and sworn to before me this 18th day of
March, A. D. 1912.

JNO. R. WINN,
Notary Public for Alaska.

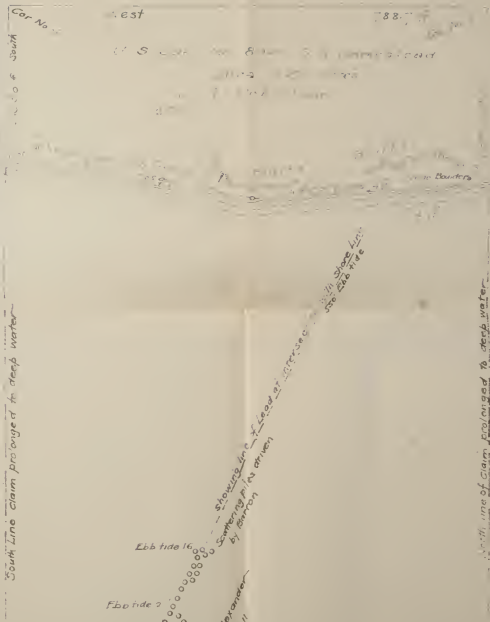
[Endorsed]: Filed Mar. 11, 1912. E. W. Pettit,
Clerk. [32]

1844



True Meridian

Magnetic Str. 30 E.



High water approx. 5 ft above high tide

High water Bare Rock at all tides

Not navigable for boats



Sunk Line claim, proposed to deep water

High tide 16

High tide 7

High tide 33

Pilot driven by Pilotmaster Asian tide 28 to 30

Scale Longitude 114 1/2

Chatham

S + r 2

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Answer [to Amended and Supplemental Complaint].

Comes now the defendant in the above-entitled case, and for answer to the amended and supplemental complaint on file herein:

I.

Denies each and every allegation contained in paragraphs Nos. I, II, III, IV and V, of the amended and supplemental complaint, except the following allegation appearing in said paragraph IV, viz.: "That Chatham Straits contains navigable waters for all sizes of vessels, and that at all parts of Chatham Straits the ocean tides regularly ebbs and flows, and that the waters of said Chatham Straits abound in fish and especially salmon."

II.

Denies each and every allegation contained in paragraph VI of said complaint, except the following: "That the temporary order, originally granted herein by this Honorable Court in favor of the plaintiff and against the defendant, was dissolved on motion of said defendant and said disallusion was contested by this plaintiff." [33]

And as an affirmative defense to the matters and things charged in said complaint, defendant alleges:

A.

That he is a citizen of the United States, over twenty-one years of age and a resident and inhabitant of the territory of Alaska; that defendant has for many years been engaged in the business of salmon fishing in the waters of Southeastern Alaska; that he and his associates are now engaged in such business and have invested large sums of money in steamboats, fish-traps and other property and appliances used in their said business.

B.

That Chatham Strait is a large arm of the Pacific Ocean, navigable for all sizes of vessels, and is about two hundred miles in length, and has an average width of about fifteen miles; that at the place where defendant has constructed his fish-trap hereinafter described said Chatham Strait is about twelve miles in width; that in all parts of said Strait the ocean tides regularly ebb and flow; that the waters of said Chatham Strait abound in fish, salmon being especially abundant, and said waters constitute a fishery, free, public and common to all persons.

C.

That on or about the 1st day of November, 1910, defendant and others who are interested in business with him located a place in said Chatham Strait about two miles south of Funter Bay on the shores of Admiralty Island, and in the open navigable waters of said Strait, for the purpose of constructing a fish-trap for taking salmon; that said place so located by

defendant, is a valuable fish-trap site [34] for the reason that large schools of salmon abound in the immediate waters; that the place so selected and located by defendant as aforesaid was unoccupied and unappropriated and was not being used by anyone engaged in the fish business or in any other kind of business except commerce and navigation; that it was open, navigable water; that after so locating said place, as aforesaid, defendant and his associates made soundings, and thereafter at great expense procured piles and a pile-driver and steamboat, all of which defendant used in the construction and erection of a fish-trap upon the location above mentioned; that defendant drove said piles and constructed said trap entirely in the open, unoccupied, unappropriated, navigable waters of said Chatham Strait below low-tide lands of Admiralty Island; that the place where said trap was so constructed and driven by defendant is, as defendant is now informed, directly in front of land claimed by the plaintiff and called Nonmineral Survey No. 804.

D.

Defendant further alleges that neither in the building and construction of his fish-trap at the place above described, nor in the operation of the same, has he attempted to interfere with the plaintiff or anyone else; that he has not threatened to interfere nor attempted to interfere, and does not now intend to interfere with plaintiff in the use of his land or property, nor his rights to fish in the navigable waters of Chatham Straits; that defendant, in the location of said trap-site and in the lawful pursuit of his right

to fish in the navigable waters of the ocean where his said trap is constructed, has expended more than Four Thousand (\$4,000) Dollars, and the [35] value of said trap, including the profits which defendant expects to make during the season of 1911, is more than Ten Thousand (\$10,000) Dollars.

E.

That plaintiff is not engaged in fishing with traps or any other devices or appliances in or near the said place where defendant has constructed his said trap, and the acts of the defendant do not interfere with, damage or affect the plaintiff in any manner; that the defendant's said fish-trap in no manner obstructs plaintiff's right of access to navigable water, nor his right of ingress or egress over the shore or tide land in front of the upland which he claims and which is called Nonmineral Survey No. 804.

F.

Defendant further alleges that the land covered by Survey No. 804 and claimed by plaintiff was at the time defendant drove his said trap and is now wholly unoccupied, unimproved and uncultivated; that there are no canneries or cannery buildings or wharves of any kind located on said land, and no buildings or improvements of any kind or description located on said land, except one small unoccupied board shack, costing not to exceed Fifteen (\$15) Dollars; that said land is covered with a dense growth of forest; that said land so claimed by plaintiff is of no value whatever for agricultural purposes or any other purpose.

WHEREFORE, having fully answered, defendant prays that the temporary restraining order here-

tofore made be dissolved and that defendant be dismissed with his reasonable costs.

Z. R. CHENEY,
R. W. JENNINGS,
Attys. for Defdt. [36]

United States of America,
District of Alaska,—ss.

I, C. J. Alexander, being first duly sworn, on oath say: That I am the defendant in the above-entitled action; that I have read the foregoing Answer and know the contents thereof, and believe the same to be true; that I make this verification because.....

C. J. ALEXANDER.

Subscribed and sworn before me this 14th day of Mch., 1912.

[Seal]

Z. R. CHENEY,
Notary Public for Alaska.

Due service of a copy of the within is admitted this 14th day of Mch., 1912.

WINN & BURTON,
Attorney for Plaintiff.

[Endorsed]: No. ——. In the District Court for Alaska, Division No. 1, at Juneau. J. T. Barron, Plaintiff, vs. C. J. Alexander, Defendant. Z. R. Cheney, Attorney for ————. Office: Juneau, Alaska, Lewis Block. Filed Mar. 15, 1912. E. W. Pettit, Clerk. [37]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

**Reply to Answer to Amended and Supplemental
Complaint.**

Comes now the above-named plaintiff and replying to the Answer to the Amended and Supplemental Complaint herein states and alleges as follows:

I.

Referring to paragraph A of the Affirmative Defense in said Answer, this plaintiff has not knowledge or information sufficient to form a belief as to the facts set forth therein and therefore denies the same and each and every part thereof.

II.

Referring to paragraph B of said Affirmative Defense in said Answer, this plaintiff denies that portion thereof in the last two lines of said paragraph which reads as follows: "said waters constitute a fishery free, public and common to all persons."

III.

Replying to paragraph C of said Affirmative Defense in said Answer, this plaintiff denies the same and each and every portion thereof, except that the site in question is a valuable fish-trap site and that large schools of salmon abound in the immediate

waters, and that the defendant has erected a fish-trap and that said trap so constructed is in front of the land owned by said plaintiff embraced in Nonmineral Survey No. 804. And further replying to said paragraph, this plaintiff states that said fish-trap of said defendant is driven entirely [38] within the harbor immediately in front of plaintiff's land and connected to the shore and said upland, and in the manner as set forth in the Amended and Supplemental Complaint herein, and prevents plaintiff's ingress and egress to and from his said upland out of said harbor, and that said water in said harbor or cove is a part of the waters of Chatham Strait.

IV.

Referring to paragraph D of said affirmative defense in said Answer and replying thereto, this plaintiff states that he denies said paragraph and each and every portion thereof, except that defendant has constructed a fish-trap in the manner and form hereinbefore described in this Reply and in the Amended and Supplemental Complaint herein.

V.

Referring to paragraph E of said Answer, this plaintiff denies the same and each and every portion thereof.

VI.

Referring to paragraph F of said Answer, this plaintiff denies the same and each and every portion thereof, except the plaintiff admits that he has no cannery on said premises included in said Survey 804; admits that he has a building thereon. And further replying to said paragraph this plaintiff al-

leges the reason that he has not used said premises for a wharf, fish station, fish site or fish-trap site, is, that he has been prevented from so doing by the wrongful acts of the defendant as set forth in the complaint herein.

WHEREFORE, plaintiff prays for the relief demanded in the Amended and Supplemental Complaint herein.

WINN & BURTON,
Attorneys for Plaintiff. [39]

United States of America,
District of Alaska,—ss.

I, James T. Barron, being first duly sworn, on oath, say: That I am the plaintiff in the above-entitled action; that I have read the foregoing Reply and know the contents thereof, and believe the same to be true.

JAMES T. BARRON.

Subscribed and sworn to before me this fifteenth day of March, A. D. 1912.

[Seal]

NEWARK L. BURTON,
Notary Public for Alaska.

Due service of a copy of the within Reply admitted this 15th day of Mch., 1912.

Z. R. CHENEY,
R. W. JENNINGS,
Attorney for Defdt.

[Endorsed]: Copy. No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire Alexander, Defendant. Reply to Answer to Amended and Supplemental Complaint. John R. Winn, Newark

L. Burton, Attorneys for ————. Office: Juneau, Alaska, Office No. ————. Filed Mar. 18, 1912. E. W. Pettit, Clerk. By H. Malone, Deputy. [40]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Order [Denying Motion for a New Trial, etc.].

The motion for a new trial herein and to set aside the opinion filed by the Court in this cause and grant a rehearing herein, coming on for hearing on this 1st day of July, A. D. 1912, and before the Court had made, rendered, signed and filed its Findings of Fact and Conclusions of Law herein, and the Court being fully advised in the premises, overrules and denies said Motion, and to said action of the Court the above plaintiff excepts and said exception is by the Court allowed.

Done in open court this 1st day of July, A. D. 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. 1, page 311.

Filed Jul. 1, 1912. E. W. Pettit, Clerk. By
———, Deputy. [41]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Order [Denying Findings, etc.].

This matter coming on for hearing on the Findings of Fact and Conclusions of Law, offered and tendered herein by plaintiff and defendant, respectively, and the Court being fully advised herein, overrules and denies the Findings of Fact except wherein the same are in conformity with the findings made by the Court and Conclusions of Law, and each of them, tendered and offered by plaintiff and makes its own Findings herein, and to which said overruling and denying of plaintiffs tendered Findings No. 1, No. 2, No. 3, No. 4, plaintiff asks and is allowed an exception, but the Court does find that plaintiff is the owner of the upland set forth and described in the plaintiff's complaint, to which Findings said plaintiff does not ask an exception; and to the refusal of the Court to make Findings V, VI, VII and VIII offered and tendered by plaintiff, plaintiff asks and is allowed an exception.

And to the refusal of the Court to make and sign Conclusions of Law, I, II, III, offered and tendered

by plaintiff, plaintiff asks and is allowed an exception.

And to the making, signing and filing herein by the Court its Findings II and III, and its Conclusions of Law I and II, this plaintiff asks and is allowed an exception.

Done in open court this 1st day of July, A. D. 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. 1, pages 313-14.

Filed Jul. 2, 1912. E. W. Pettit, Clerk. By _____, Deputy. Nunc pro tunc as of July 1, 1912. [42]

In the District Court of Alaska, Division No. One.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE ALEXANDER,

Defendant.

Findings and Conclusions and Decree Requested by Defendant.

This cause came on for trial March 18, 1912, before the Judge of the above-entitled court, on the pleadings and on the evidence produced. The parties were represented by their respective counsel, to wit, Messrs. Winn and Burton, for plaintiff, and Mr. Z. R. Cheney and Mr. R. W. Jennings, for defendant, and were present in person. Both sides announced themselves ready for trial. Evidence was heard and

argument had on behalf of both sides; and at the instigation and request of both sides the Court made a trip to the *locus in quo* and personally inspected the fish-trap complained of and the upland mentioned in the complaint. On the 4th day of May, 1912, the Court rendered its opinion herein in favor of defendant. And defendant now moving for Findings, Conclusions and Decree, in accordance therewith, the Court, from all the evidence herein, doth make the following

FINDINGS OF FACT.

(1) That the tide lands in front of U. S. Survey No. 804, mentioned in the complaint herein, are not, and never have been, in the possession or occupancy of plaintiff, or his grantors.

(2) That the fish-trap of defendant, nor any acts of defendant, have not obstructed or interfered with, and will not obstruct or interfere with, the free ingress to or egress from the land covered by said Survey No. 804.

And, from the facts so found, the Court makes the following

CONCLUSIONS OF LAW.

(1) That the plaintiff is not entitled to the injunction [43] sought or to any other relief.

(2) That the complaint herein should be dismissed with costs.

Wherefore it is ordered, adjudged and decreed that the complaint herein be and the same is hereby dismissed, and that defendant do have and recover of

and from plaintiff his costs and disbursements herein, to be taxed.

In open court this — day of —, 1912.

_____,
Judge.

[Endorsed]: No. 840-A. James T. Barron vs. Claire Alexander. Findings, Conclusion and Decree Requested by Defendant. Filed Jun. 28, 1912. E. W. Pettit, Clerk. By H. Malone, Deputy. [44]

—
*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Findings of Fact and Conclusions of Law.

The Court having heretofore on the 4th day of May, 1912, rendered and filed its written Opinion in this cause, now makes the following Findings of Fact and Conclusions of Law herein:

FINDINGS OF FACT.

I.

That the plaintiff is the owner and entitled to the possession of the following described tract or parcel of land situate, lying and being on the south shore of Chatham Straits, about five miles north of Hawk Inlet, on Admiralty Island, in the District of Alaska,

more particularly described as follows, to wit:

Beginning at corner No. 1 M. C., from whence U. S. L. M. No. 804 bears S. $74^{\circ} 2'$ West 5.78 chains; thence meandering the shore line of Chatham Straits, first course S. $80^{\circ} 51'$ East 6.15 chains; second course North $86^{\circ} 5'$ East 5.89 chains to corner No. 2; thence North 4.36 chains to corner No. 3; thence West 11.95 chains to corner No. 4; thence South 3.78 chains to corner No. 1 M. C., place of beginning, containing an area of 5.27 acres;

II.

That said tract of land abuts on Chatham Straits, an arm of the North Pacific Ocean; that in the spring of 1911 the defendant commenced the construction of a fish-trap in the waters of Chatham Straits opposite and in front of the tract of land hereinbefore described; that subsequently and before the trial [45] of this action the defendant completed the construction of said fish-trap; that said fish-trap and the whole thereof, including the lead line, are situate in the waters of Chatham Straits and below low-water mark.

III.

That defendant's fish-trap does not in any manner interfere with the free ingress and egress to and from the premises hereinbefore described to the deep water of Chatham Straits, nor from any part of said premises to said deep water of said Chatham Straits; that the operation of said fish-trap will not obstruct or interfere with the free ingress to or egress from the land hereinbefore described; and that none of

the acts of the defendant with reference to the construction, maintenance or operation of said fish-trap have or will obstruct or interfere with the plaintiff in the exercise of his right to free and unobstructed access to his land and every part thereof from the deep waters of Chatham Straits or from his land, as hereinbefore described, to the navigable waters of said Chatham Straits.

From the fact so found, the Court makes the following:

CONCLUSIONS OF LAW.

I.

That the plaintiff is not entitled to the injunction sought herein or to any other relief.

II.

That the plaintiff's complaint herein should be dismissed and defendant should have judgment for his costs and disbursements herein.

Done in open court this first day of July, 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. 1, pages 310, 311. [46]

[Endorsed]: No. 840-A. In the District Court of the United States for the Div. No. 1, of Alaska, James T. Barron, Plaintiff, vs. Claire J. Alexander, Defendant. Findings of Fact and Conclusions of Law. Filed July 1, 1912. E. W. Pettit, Clerk. [47]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Order [Denying Motion for a New Trial, etc.].

The motion for new trial herein, or the setting aside of the Findings of Fact and Conclusions of Law made and filed by the Court in this cause, and the granting of a rehearing herein, coming on for hearing on motion of plaintiff, and the same being supported by the affidavit of Jno. R. Winn herein concerning the visit of the Judge of this court to the situs of the fish-trap and the tract of land described in plaintiff's complaint and the change made in the construction of said fish-trap, and the Court being fully advised in the premises, overrules and denies said motion and further states that the change made in the construction of the fish-trap by the said defendant does not cause the same to in any wise interfere with plaintiff's free ingress from the navigable waters of Chatham Straits to his upland and all parts thereof, or free egress from his upland and all parts thereof to the navigable waters of said Chatham Straits. To

all of which the plaintiff asks and is allowed an exception.

Done in open court this 2d day of July, A. D. 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. 1, page 314.

[Endorsed]: Filed Jul. 2, 1912. E. W. Pettit,
Clerk. By _____, Deputy. [48]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Decree.

Now, on this day, this matter coming on to be heard and the Court heretofore having made and entered its Findings of Fact and Conclusions of Law herein, and the plaintiff having filed a motion for a new trial herein, and the Court having considered said motion and having duly and regularly overruled the same,—

IT IS NOW, THEREFORE, CONSIDERED, ORDERED, ADJUDGED and DECREED, that the complaint herein be, and the same is hereby, dismissed, and that the defendant do have and recover of and from the plaintiff his costs and disbursements herein to be taxed in the sum of \$169 50/100 Dollars.

To all of which the plaintiff excepts and such exception is allowed by the Court.

Done in open court this second day of July, 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. 1, page 314.

[Endorsed]: No. 840-A. In the District Court of the United States for the Div. No. 1, of Alaska. James T. Barron, Plaintiff, vs. Claire J. Alexander, Defendant. Decree. Filed Jul. 2, 1912. E. W. Pettit, Clerk. By _____, Deputy. [49]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Motion [to Make Certain Exhibits Part of Bill of Exceptions].

Comes now the above-named plaintiff by his attorneys, Winn & Burton, and moves the Court to make the following exhibits part of the Bill of Exceptions in the above-entitled cause, viz.:

Photographs: Defendant's Exhibits 5, 6, 7, 8, 9, 10, 11 and 12;

Plat: Defendant's Exhibits No. 3 and No. 4;

Telegrams: Defendant's Exhibits Nos. 1 and 2;

ALSO

Plats: Plaintiff's Exhibits "B," "C," "A," "D";
Application Form of Soldiers' Additional Home-
stead;

Assignment of Scrip to Barron;

Telegrams: Plaintiff's Exhibits "E" and "D."

Also moves the Court to permit the original exhibits as follows to be attached to the Bill of Exceptions and made a part thereof, viz.:

Defendant's Exhibits 5, 6, 7, 8, 9, 10, 11, and 12, being photographs above named; and Defendant's Exhibit No. 3, being plat above named;

Also Plaintiff's Exhibits "A" and "C," being plats;

Also moves the Court to make the Findings of Fact and Conclusions of Law, and motion to set aside the opinion of the Court and for a rehearing, and the motion to set aside [50] the Findings of Fact and Conclusions of Law and for new trial herein or rehearing; also the affidavit of Jno. R. Winn in support of the motion for a new trial, or the setting aside of the Findings of Fact and Conclusions of Law and granting a rehearing herein, and the affidavit of Jno. R. Winn as to the value of subject matter of litigation, all be made a part of the record or Bill of Exceptions on appeal herein.

WINN & BURTON,
Attorneys for Plaintiff.

Filed Jul. 2, 1912. E. W. Pettit, Clerk. By

_____, Deputy. [51]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Order [Making Certain Exhibits Part of Bill of Exceptions].

The motion of plaintiff herein to make certain exhibits, offered in evidence upon the trial of the above-entitled cause, part of the record for appeal herein, and the request of plaintiff to have certain original exhibits, offered in evidence in said cause, forwarded with the record on appeal to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, and the Court being fully advised in the premises,

IT IS ORDERED, that the following exhibits be made a part of the record herein for appeal, to wit:

Photographs: Defendant's Exhibits 5, 6, 7, 8, 9, 10, 11 and 12;

Plats: Defendant's Exhibits No. 3 and No. 4;

Telegrams: Defendant's Exhibits Nos. 1 and 2;

ALSO

Plats: Plaintiff's Exhibits "A," "B," "C," and "D";
Application Form of Soldiers' Additional Homestead;

Assignment of Scrip to Barron;

Telegrams: Plaintiff's Exhibits "E" and "D."

Also the following are made a part of record on appeal herein:

Findings of Fact and Conclusions of Law offered and tendered by the plaintiff herein;

Motion to set aside the opinion of the Court and grant [52] a new trial or rehearing herein;

Motion to set aside the Findings of Fact and Conclusions of Law made by the Court and to grant a new trial or rehearing herein;

Affidavit of John R. Winn in support of the motion to set aside the Findings of Fact and Conclusions of Law made by the Court herein and the granting of a new trial or rehearing;

Affidavit of John R. Winn showing that the value of subject matter of litigation in this cause exceeds in value \$500.00, and the opinion of the Court rendered and filed herein.

Done in open court this 2d day of July, A. D. 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. 1, page 315.

Filed Jul. 2, 1912. E. W. Pettit, Clerk. By

_____, Deputy. [53]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Notice [of Settlement of Bill of Exceptions, etc.].
To the Above-named Defendant, Claire J. Alexander,
and Z. R. Cheney and Robert W. Jennings, His
Attorneys:

Please take notice that we will call up for hearing, settling and allowing the Bill of Exceptions of the above-named plaintiff on appeal to the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, from the judgment rendered in the above-entitled court against the above-named plaintiff, James T. Barron, and all other matters pertaining to the perfection, settling and allowing an appeal from said judgment or decree, before Honorable Thomas R. Lyons, Judge of the above-entitled court, on the 1st day of July, 1912, at ten o'clock in the forenoon of said day, at the courthouse in Juneau, Alaska.

Dated this 27th day of June, A. D. 1912.

WINN & BURTON,
Attorneys for Plaintiff. [54]

United States of America,
District of Alaska,
Division No. 1,—ss.

I hereby certify that I received the within notice on the 27th day of June, 1912, at Juneau, Alaska, and that I served the same on the 27th day of June, 1912, at Juneau, Alaska, by leaving a true copy of the within notice at the residence of the within-named attorney for the defendant, R. W. Jennings, at the hour of 1 P. M., the said copy having been delivered to the wife of the said R. W. Jennings, she being a person of

suitable age and discretion; and it is further certified that the said R. W. Jennings was absent from his place of residence and office and that access to the latter could not be obtained.

H. L. FAULKNER,
United States Marshal.
By J. F. Mullen,
Chief Deputy.

Dated at Juneau, Alaska, this 27th day of June, 1912.

[Endorsed]: Received at Juneau, Alaska, June 27, 1912, at 10:45 A. M. Docket No. 2308. H. L. Faulkner, U. S. Marshal. By J. F. Mullen, Chf. Office Deputy. Filed Jul. 1, 1912. E. W. Pettit, Clerk. By _____, Deputy. [55]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Assignment of Errors.

Comes now the above-named plaintiff, James T. Barron, by his attorneys, Winn & Burton, and assigns the following errors committed by the Court on the trial and determination of the above-entitled cause and upon the rendition of a judgment or decree

herein dismissing said action, and upon which plaintiff relies in the Appellate Court, to wit:

I.

The Court erred in making an order herein on March 30th, 1911, dissolving the temporary restraining order which had heretofore been sued out and obtained in this court and cause.

II.

The Court erred in not making, signing and filing herein Findings of Fact, I, offered and tendered by the plaintiff, which said finding covered substantially the fact that the plaintiff was for several years prior to the commencement of this action, and was at the time of the commencement thereof, the president of the Thlinket Packing Company, and was largely interested in said company, and which said company was the owner of a large number of floating stock, fish-boats, etc., and fish-trap sites and fishing [56] stations, which were all necessary for the conducting of its said business.

III.

The Court also erred in not making, signing and filing herein, Finding of Fact II, offered and tendered by plaintiff, which said finding established the fact that the plaintiff herein purchased the trap-site in controversy from the Alaska Packers Association, a corporation, a long time prior to the defendant claiming any interest therein.

IV.

The Court erred in not making Finding of Fact III, offered and tendered by the plaintiff herein, which said finding establishes the fact of the taking

up by one V. A. Robertson, his Soldiers' Additional Homestead claim, which abutted upon the fish-trap site location in controversy, and which said taking up was made a long time prior to defendant claiming any interest in the waters or shore land immediately in front of said homestead claim, which is designated as U. S. Nonmineral Survey No. 804, containing 5.27 acres.

V.

The Court erred in not making Finding of Fact IV, offered and tendered by the plaintiff herein, which recites the fact of the purchase by the plaintiff from the above-mentioned V. A. Robertson, of the upland contained in his said Soldiers' Additional Homestead claim known as U. S. Nonmineral Survey No. 804, which said purchase was made by said plaintiff before the defendant ever claimed any right, title or interest in and to the shore lands bordering thereon or the waterfront of said upland, and that plaintiff continued patent proceedings for said Survey No. 804 which had theretofore been commenced by said Robertson; and that plaintiff obtained [57] a final receiver's certificate therefor before the trial of this cause.

That all of said Findings, I, II, III and IV, so offered and tendered by plaintiff were supported by all the evidence in said cause.

VI.

The Court erred in refusing to make Finding V, offered and tendered by the plaintiff herein, which said finding recites the fact that plaintiff, by reason of owning the upland contained in Survey No. 804,

is entitled to the exclusive right of ingress and egress between his upland and from the shore land, etc., to the navigable waters of Chatham Straits abutting thereon, and is entitled to the exclusive and unobstructed access to said waters from all points of his upland.

VII.

The Court erred in refusing to make Finding of Fact VI, offered and tendered by plaintiff, which in substance shows the use to which plaintiff had devoted the waters and harbor in front of his upland before defendant claimed any rights to said waters, or right to build and maintain a fish-trap therein, and further showing the necessity of plaintiff having the use of said waters for mooring of vessels and reaching of upland abutting thereon; all of which said above mentioned facts were established in part by uncontradicted testimony and evidence, and the remaining portion by a great preponderance of the evidence in said cause.

VIII.

The Court erred in refusing to make Finding VII, offered and tendered by the plaintiff herein, which said finding established the fact of the entry of the plaintiff herein, [58] on March 14, 1911, upon the shore land and water immediately in front of said Survey No. 804, and placing therein and thereupon several piles and a notice that he claimed the said ground and waters as a fish-trap site and station, and the wrongful entry thereon of said premises thereafter by said defendant and doing the acts complained of in said finding so offered and tendered;

also showing the false representations made and testified to by the defendant in order to get the temporary restraining order granted herein dissolved; also showing the manner in which said defendant constructed his fish-trap, and the extending of the lead thereof to the upland of plaintiff; for the reason and upon the ground that all of said facts so contained in said finding were either supported by the uncontradicted testimony and evidence or a great preponderance of the evidence in said cause.

IX.

The Court erred in not making Finding of Fact VIII, offered and tendered by plaintiff herein, wherein said Court was asked to find, among other things, that the construction and maintenance of said fish-trap by defendant had obstructed plaintiff's access to the navigable waters abutting upon his upland, and in fact had, to a great extent, cut off plaintiff's egress from his upland to said navigable waters abutting thereon, and particularly had it done so at the point or place where plaintiff had been accustomed to anchor and moor his vessels, and cut off plaintiff's access to said navigable waters from the part of his shore land best adapted for said purpose and which had been so selected by plaintiff a long time prior to defendant initiating any rights to said shore lands or water immediately in front thereof, for the reason that [59] the said facts set forth in said tendered finding were either supported by the uncontradicted evidence or a great preponderance of the evidence in said cause.

X.

The Court erred in not making Conclusions of Law

I, II and III, offered and tendered by plaintiff, for the reason that said conclusions are supported in some respects by uncontradicted evidence in said cause, and in all respects by a great preponderance of the evidence.

XI.

The Court erred in making, signing and filing all of that portion of the Court's Finding of Fact II herein which reads as follows: "that said fish-trap, and the whole thereof, including the lead line, are situate in the waters of Chatham Straits and below low-water mark," for the reason that said portion of said finding is unsupported by the evidence and largely against the uncontradicted evidence and entirely contrary to a great preponderance of the evidence in said cause.

XII.

That the Court erred in making its Finding of Fact III herein, which is as follows:

"That defendant's fish-trap does not in any manner interfere with the free ingress and egress to and from the premises hereinbefore described to the deep water of Chatham Straits, nor from any part of said premises to said deep water of said Chatham Straits; that the operation of said fish-trap will not obstruct or interfere with the free ingress to or egress from the land hereinbefore described; and that none of the acts of the defendant with reference to the construction, maintenance or operation of said fish-trap have or will obstruct or interfere with the plaintiff in the exercise of his right to free

and unobstructed access to his land and every part thereof from the deep waters of Chatham Straits or from his land, as hereinbefore described, to the navigable waters of said Chatham Straits.” [60]

for the reason that same, in many respects, is against the uncontradicted evidence in said cause, and in all respects against the great preponderance of the evidence and admitted facts in said cause.

XIII.

The Court erred in making Conclusions of Law I and II herein, for the reason said conclusions are against law and are unsupported by the evidence.

XIV.

The Court erred in visiting and inspecting the fish-trap site and waters and shore land in and upon which said fish-trap was constructed, and the upland described in the complaint, after the close of the evidence in said cause, for the reason and upon the ground that said visit was made by the Court, or Judge thereof, upon his own motion and after all the evidence and argument of counsel had been made in the cause, and for the further reason that it appears conclusively from the record in said case that upon the Court's arrival at the property in question, the every thing which he desired to see had been removed, or destroyed, and a new and different fish-trap and lead constructed; and these matters were all taken into consideration by the Court in the making of his Findings of Fact herein, and influenced the Court in the rendition of the final judgment herein, and is tantamount to depriving plaintiff of

his property or property rights without a trial and the rendering of a decision by the Court, not upon the cause of action set forth in the complaint, but the substitution by the Court of a new and entirely different cause of action and rendering a judgment and decree upon the same upon his own judgment and without evidence, and without the plaintiff having his day in court; and the Court should have considered the action of the defendant herein as a confession [61] that the way the fish-trap set up in the complaint was constructed, it obstructed and cut off plaintiff's free ingress to his upland from the navigable waters bordering thereon, and egress from such upland to said waters.

XV.

The Court erred in not granting the motion for a new trial or rehearing herein and setting aside his written opinion filed in this cause.

XVI.

The Court erred in overruling and denying plaintiff's motion herein to set aside the Findings of Fact and Conclusions of Law made and rendered by the Court, and granting a rehearing or new trial in this cause.

WINN & BURTON,

Attys. for Plaintiff.

United States of America,

District of Alaska,

Division No. 1,—ss.

I hereby certify that I received the within Assignment of Errors on the 3d day of July, 1912, at Juneau, Alaska, and that I served the same on the

3d day of July, 1912, at Juneau, Alaska, by delivering and leaving a full, true and correct copy of said Assignment of Errors to Mrs. R. W. Jennings, she, being there and then the wife of R. W. Jennings, she being there and then over the age of 21 years, and living at the present place of abode of the said R. W. Jennings, the said R. W. Jennings, being, there and then the attorney of the within named defendant Claire J. Alexander, and the said R. W. Jennings being absent from this Division, and said service were made on [62] Mrs. R. W. Jennings, personally and in person.

Dated at Juneau, Alaska, July 3, 1912.

H. L. FAULKNER,
United States Marshal.
By Hector McLean,
Office Deputy.

Marshal's fees: One service, \$3.00.

Paid by J. R. Winn.

[Endorsed]: Original. No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire J. Alexander, Defendant. Assignment of Errors. John R. Winn, Newark L. Burton, Attorneys for Plaintiff, Office: Juneau, Alaska, Office: ——. Filed Jul. 3, 1912, E. W. Pettit, Clerk. By H. Malone, Deputy. [63]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Petition for Appeal and Order Allowing Appeal.

To the Hon. THOMAS R. LYONS, District Judge:

The above-named plaintiff, James T. Barron, conceiving himself aggrieved by the judgment and decree made and entered on the 2d day of July, 1912, in the above-entitled cause, does hereby appeal from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and he prays that this, his appeal, may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment and decree was made and based, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit, to the end that said decree may be reversed or modified and speedy justice done in the premises.

The said James T. Barron, appellant, does herewith present and file his Assignment of Errors, together with a Bond on Appeal, which said bond appellant prays may be approved by this court and a supersedeas awarded in the premises.

WINN & BURTON,

Attorneys for Plaintiff.

And now, on this 3d day of July, 1912, in open court, it is ordered that the appeal herein be, and the same is, allowed as prayed for above.

THOMAS R. LYONS,

Judge Dist. Ct. of Alaska, Div. No. 1, at Juneau.

Entered Court Journal No. I, page 317.

Filed Jul. 3, 1912. E. W. Pettit, Clerk. By
—————, Deputy. [64]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Order Fixing Bond.

The Court having allowed an appeal in the above-entitled cause, it is ordered that the appeal bond be, and the same is, hereby fixed at Five Hundred Dollars (\$500.00).

THOMAS R. LYONS,

Judge.

Dated Wednesday, July 3, 1912.

(Civil Journal I, page 317.) [65]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That James T. Barron, as principal, and John Reck
and J. C. McBride, of the town of Juneau, Alaska,
as sureties, are held and firmly bound unto Claire
J. Alexander, the above-named defendant, in the full
and just sum of \$500.00/100 to be paid to the said
Claire J. Alexander, his attorneys, executors, admin-
istrators or assigns; to which payment, well and
truly to be made, we bind ourselves, our heirs, execu-
tors, administrators, jointly and severally, firmly by
these presents.

Sealed with our seals and dated this 3d day of
June, A. D. 1912.

WHEREAS, on the 2d day of July, 1912, in the
District Court of the United States for the District
of Alaska, Division No. One, in a suit pending in
that court, wherein James T. Barron was plaintiff
and Claire J. Alexander was defendant, said suit
being numbered 840-A, a decree was rendered against
the said James T. Barron, the above-named plain-
tiff, and the said James T. Barron having obtained

an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree, and a citation directed to the said Claire J. Alexander, the above-named defendant, citing and admonishing him to be and appear at a [66] session of the United States Circuit Court of Appeals for the Ninth Circuit, on the 3d day of August, A. D. 1912.

Now, the condition of the above obligations is such that if the said James T. Barron shall prosecute his appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES T. BARRON,
Principal.

By WINN & BURTON,
His Attorneys.

JOHN RECK,
J. C. McBRIDE,
Sureties.

United States of America,
District of Alaska,—ss.

John Reck and J. C. McBride, whose names are subscribed to the foregoing Bond on Appeal, being first duly sworn, each for himself and not one for the other, deposes and says: I am a resident and householder of the District of Alaska, and in all things qualified as bail in said District of Alaska; that I am worth the amount specified in the above bond in separate property over and above all my just debts and

liabilities, exclusive of property exempt from execution, and that I am not an attorney at law, clerk, marshal or other officer of any court.

[Notarial Seal]

JOHN RECK.

J. C. McBRIDE.

Subscribed and sworn to before me this 3d day of July, A. D. 1912.

NEWARK L. BURTON,

Notary Public in and for Alaska.

In open court at Juneau, June 3d, 1912—Bond approved.

THOMAS R. LYONS,

Judge. [67]

[Endorsed]: No. 840-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. James T. Barron, Plaintiff, vs. Claire J. Alexander, Defendant. Bond on Appeal. Filed July 3, 1912. E. W. Pettit, Clerk. John R. Winn, Newark L. Burton, Attorneys for _____, Office: Juneau, Alaska. [68]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Citation on Appeal.

United States of America,—ss.

The President of the United States to Claire J. Alexander, and His Attorneys, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal filed and of record in the office of the Clerk of the United States District Court in and for the District of Alaska, Division No. One, in a cause wherein James T. Barron is plaintiff and appellant, and Claire J. Alexander is defendant and appellee, to show cause, if any there be, why the judgment and decree rendered against the appellant, James T. Barron, in said cause, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Hon. EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 3d day of July, 1912, and of the Independence of the United States the 136th.

THOMAS R. LYONS,

Judge.

Copy of above citation received and service accepted this 24 day of July, 1912.

Z. R. CHENEY,

Attorney for Defendant. [69]

Filed Jul. 3, 1912. E. W. Pettit, Clerk. By
—————, Deputy. [70]

In the District Court for the District of Alaska, Division No. One, at Juneau.

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

Order [Extending Return Day].

For good cause shown, the return day or date under the citation issued out of the above-entitled cause and court on appeal to the Circuit Court of Appeals for the Ninth Circuit is extended for thirty days in addition to the thirty days mentioned in said citation, or said plaintiff is to have sixty days from this date in which to make return under said citation and file his record on appeal with the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Done in open court this 3d day of July, A. D. 1912.

THOMAS R. LYONS,

Judge.

Entered Court Journal No. I, page 317.

Filed Jul. 3, 1912. E. W. Pettit, Clerk. By
—————, Deputy. [71]

[Bill of Exceptions.]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 840-A.

JAMES T. BARRON,

Plaintiff,

vs.

CLAIRE J. ALEXANDER,

Defendant.

BE IT REMEMBERED, that the above-entitled cause came on for hearing before the Honorable THOMAS R. LYONS, Judge of the District Court for the First Division of the District of Alaska, at Juneau, in said District aforesaid, on the 16th day of March, 1912,—

Messrs. WINN & BURTON, appearing for plaintiff;

Messrs. Z. R. CHENEY and R. W. JENNINGS, appearing for defendant;

and thereupon a trial of said matter was had and conducted on the 16th, 18th, 19th and 20th days of March, 1912, whereupon the following proceedings were had, to wit: [72]

COURT.—Proceed with the trial, gentlemen.

Mr. WINN.—I propose to get to the issues of the case—I will read the pleadings.

COURT.—I think I can get more from the pleadings if you will just state the substance of them. I have heard the pleadings read before.

[Statement by Mr. Winn.]

Mr. WINN.—I know it. I expect there is little change in them. I don't know—very little. The amended or supplemental complaint, if the Court please, the first and second paragraphs, that part pleading the title from Robertson to Barron. His title was a deed from Robertson to himself, and I think you will find the survey under the homestead scrip act was made before Mr. Barron bought it. Then the third paragraph goes ahead with the proceedings had in the Land Office, stating we had a Receiver's receipt. While the practice is somewhat changed in the Land Office in regard to the issuance of Receiver's certificates, we expect to have to meet this issue in the case because they have denied those two paragraphs. Then we will have our proof on that to the extent that—that the property has been surveyed, application for patent made, and all the proof has been submitted to the Land Office for the patent, for the issuance of Receiver's certificate.

Mr. CHENEY.—Don't claim it has been issued, yet?

Mr. WINN.—Well, I say Receiver's certificate—it is my understanding under the present practice don't issue his certificates like they used to. The proof, I will submit it—that the proof of the claim has been somewhat held up on account of a new regulation just issued by the Department of the Interior which requires an additional affidavit in regard to how the property is located with [73] respect to the water. Heretofore you have been able to file affidavits and to show it simply bordered on the navigable water and no other claim within eighty yards, and under that

new regulation which has just come out we have, I don't know, maybe fifteen or twenty applications sent back for the purpose of supplying the affidavit in regard to the navigability of the water outside of the beach and the shore water that bordered upon. That proof has been filed to-day; just a recent request for it and Mr. Dudley, who is prosecuting the proceedings for patent, didn't know anything about that, and on looking over the title's sufficiency, I think, there was a request for these affidavits. And these affidavits have been submitted and we will have the Register of the Land Office here who will show that all the proof necessary for obtaining the Receiver's certificate has been complied with. Now, we will have to do that under the issues here because they deny all these proceedings in the Land Office, denying the survey, denying the deed from Robertson, denying the whole thing *in toto*; so we will be put to the necessity of proving such title as we have.

The fourth paragraph is a paragraph which sets up matters which I state to your Honor might in some respects—kind of sets them up for the purpose of not being outdone by the defendant in this case. Your Honor will remember that in the former case in which an answer was filed setting up a lot of matters about Chatham Straits being a navigable body of water and how wide it was and abounding in salmon and fish and he had gone to great expense in building a fish-trap and so forth and so on—all those matters. Now, I don't know just what place they have in the case so far as the defendant is concerned. The question whether he is a poor man or a rich man or has gone to

a [74] great amount of expense or a less amount of expense, I don't think would cut any figure so far as he is claiming a fish-trap site and a fish-trap site only, because the law prescribes his right, and it don't make any difference what his intentions are or whether rich or poor, because his trap location is a matter that we contend is a thing apart entirely from any upland claim, and if he has any rights to the water he has such rights as are prescribed by law and that only. But, however, as your Honor said when Mr. Burton presented a motion to strike that portion out of the former answer, you said, I think, that possibly some of these matters might be proved under a general denial, but in an equity cause you would allow them to stand, which I think is a perfectly just rule. However, in this fourth paragraph which we will plead we have set out considerable matters—that Mr. Barron is the president of the Thlinget Packing Company, which is running a cannery at Funter Bay, and it will appear, I think, in evidence in this case that he is a large stockholder, probably owns two-thirds or three-fourths of the stock, and that this cannery is a cannery of about the capacity of three thousand cases a day, and that in order to keep up this business and as a matter of necessity he took up this piece of land for, it will probably, may be, appear, for two or three purposes. In the first place, it furnishes a harbor for certain purposes which the evidence will show, and, in the second place, that it was a fish-trap location. I think that his deed from Mr. Robertson will show that Mr. Robertson attempted to deed the survey that he made of the upland and whatever rights he had there

to the fish-trap location. Now, I believe, if it please the Court, in so far as the allegations are concerned, and I just simply state this to show your Honor and so you will know my [75] contention and the contention I will make in the introduction of some of the evidence in the case. I do not think really when you get down to the bottom of it that generally the intention that Barron had in taking up that particular piece of land has any place in this court at all, because under an application under the soldiers' additional scrip act that is a matter absolutely you have to deal with the Land Department on. If after filing your application and prosecuting it to a stage that you are entitled to final Receiver's certificate, why, then there can't be any question raised anywhere as to good intentions. But, as I say, I don't believe that the intention of Mr. Barron, and I expect to use that fact, has anything in the world to do with the case, because of the fact that is a question if he owns the upland what is his rights in front of it. Now, that is the material question. But I have pleaded these matters in here, and I will state to the Court fairly, for the main and particular purpose of showing, if such a question is in the case, to show good faith and to show that this is a necessary piece of land to be used for two or three purposes. Now, I believe that is about the sum and substance of the complaint, and we contend—yes, here is another paragraph where we contend that his fish-trap is so constructed that it completely, for all practical purposes, cuts off our right of way from the navigable waters up to our land, or what may be said to be our land. We don't mean to

run a boat ashore, but we want to build a wharf out there for the purpose which will appear. We would have a right to build a wharf and have a right to reach it if we want to use it for a mooring ground or station as claimed here. Of course, have a right of way for access to it. It may be that in the trial of the case [76] the testimony that I have alleged in that paragraph will aid the Court in discovering—in ascertaining the facts as to whether or not they were obstructing our right of way to this harbor or to our upland, and in pleading these facts we will show the necessity of it, show how it has been used, and so on and so forth. It may be these are matters that will aid and assist the Court in that respect.

Then, coming down to the last question in the case, as to whether they are obstructing our right of way from our upland out to deep water. Now, that is just the purpose. The courts go so far, some even go so far as to say is free access; I think one of the latest expressions of the Circuit Court of Appeals is “free access,” and it being in the way of estoppel there, and having a deed and right of way and so forth—I think that some of the latest expressions of the Circuit Court of Appeals was that all and from all portions of your land you are entitled to free access. That means absolutely unobstructed. And we will go further in this case, if the Court please; that such completion of this trap absolutely shuts us out of and on to this. That is all there is about it. And we will show to the Court here the further allegation here that when the preliminary restraining order was granted in this case there was a motion made for the dissolu-

tion of that restraining order, and we will show that, I think, the material question that the Court was trying out at that time was as to whether or not he had cut us off from our right of way, and was basing your opinion absolutely upon the theory that Mr. Alexander testified to in that case, that is, that he had completed his trap. I don't think it is going to be contradicted in this case but what Alexander absolutely did testify to that on the [77] other trial. If he does contradict it I can show that he has testified falsely, because he did admit it was complete before. Now, you were dealing with one condition of affairs at that time. Now, you are dealing with another condition of affairs, in other words, that he violated his oath and went out there afterwards and drove at least sixteen or eighteen piles and extended that lead clear out from shore. I don't think they are going to dispute that. They can't successfully do it in this case. So, in the case as presented to your Honor will be as to the good intention—if the good intention is in the case at all—of Mr. Alexander, and as to what he swore to, and what your Honor based your opinion at that time. I mention that, if the Court please, to show that the case stands and will stand in a different attitude before the Court at this time than it did before. Of course, got a different trap and several other different matters that wasn't gone into. Mr. Barron wasn't here, and I think you will remember that the complaint in that case was verified by Mr. Barker. Mr. Barron wasn't here and had left some six months prior to the time this trial was commenced. He left in the previous September, I think, and all he knew

was what had been communicated to him.

Now, the answer in this case is about the same as the other answer, sets up a history of their building the trap, that they expected to make about ten thousand dollars a year and these matters. I don't know what figure they cut. And we have filed a reply and we have admitted it is good fishing ground—that is admitted in the case. And we also state that we took that up for that purpose, are going to devote it for fish-trap business and wharf, station and appropriate facilities, and so forth, in the first instance, [78] and we again reiterate, and when they say they didn't construct the trap out but have stated in the answer, they deny that they constructed the trap so that the lead went out and was fastened up to the upland and in fact never out of water from the pots or fillers out to our upland, and they had some kind of a contrivance which will be described by attaching a cable on which was hung the web—they didn't drive any piles clear out to the upland but they did put the lead up there. It is customary with—it will be shown in the construction of these traps—to always get up to the shore line as close as possible and to get up so that your lead any way will go out so far as the line of ordinary tide. They went even beyond this in this case and fished it. And under our view we expect the property in the case—well, we expect to prove such title to that—I don't think there is any question about the title—we will prove to the Court the title to the upland.

COURT.—The defendant make a statement?

Mr. CHENEY.—We will reserve our argument

(Testimony of C. B. Walker.)

until the case is through.

COURT.—Very well; proceed, gentlemen. Call your first witness.

Mr. WINN.—Mr. Walker. [79]

[Testimony of C. B. Walker, for Plaintiff.]

C. B. WALKER, being duly called and sworn, testified as follows on behalf of the plaintiff.

Direct Examination.

Q. (By Mr. WINN.) What is your official position, Mr. Walker?

A. I am the Register of the Land Office at Juneau, Alaska, Juneau District.

Q. You have Mr. Walker's initials, have you, Mr. Robertson?

REPORTER.—Yes.

Q. (By Mr. WINN.) How long have you been Register of the Land Office at Juneau?

A. For a little over two years.

Q. Now, I will ask you, Mr. Walker, if you have any papers in the office of the Register and Receiver of the Land Office at Juneau in the matter of the application for patent to United States Nonmineral Survey Number 804, which is designated as the homestead of V. A.—V. A. Robertson?

A. Yes, sir; I have.

Q. Now, that—the proceedings in the application for patent in that case, I will ask you if you have any other way in the Land Office of referring to them or designating them, other than the application for

(Testimony of C. B. Walker.)

patent to the grounds contained in U. S. Survey No. 804? A. No.

Q. Well, you have a serial number, have you?

A. We have a serial number and the application occurs, of course, in the name of that person who seeks to get title to the land.

Q. Yes.

A. The serial number in this case is serial number 01472.

Q. You have the—have you there a copy of the—of one of the original maps or plats upon which the application for patent was based? [80]

A. I have the office record of the files in that case described as U. S. Survey 804 and it is certified by the Surveyor-General for Alaska as the correct plat of the claim.

Mr. WINN.—Has your Honor the original complaint here?

COURT.—Yes.

Mr. WINN.—Now, there are some exhibits in this case.

REPORTER.—I have some exhibits.

Mr. WINN.—Maybe better to get those exhibits.

Mr. CHENEY.—If the Court please, they offered the exhibits—

Mr. BURTON.—That is in the former case.

Mr. WINN.—I would rather have it; shows the courses. I want to refer to that map or plat. Now, I don't know whether it is a certified copy. I don't know whether you are going to raise any objection to a certified copy.

(Testimony of C. B. Walker.)

Mr. BURTON.—It is a certified copy.

Q. (By Mr. WINN.) Now, Mr. Walker, will you refer to the plat, the official plat or map of this survey in question and state that—you had the original with you—I will ask you is the map which you have referred to, if you know, which I hand you here now, is it a copy of the map and plat which you just referred to in your answer to my question?

A. Well, the map—I have the office plat and not the original. This is a quadruplicate of the original which is either in the Surveyor-General's office or the General Land Office—

Q. Yes; I see.

A. —and this that you now hand me is a—is a certified copy of one of the quadruplicate plats in the office of the Surveyor-General and is the same as the one I have.

Q. Same as the one you have filed in your office? Have you any objection to offering this in evidence?

Mr. CHENEY.—I think it is in evidence.

COURT.—Just offered in evidence in the preliminary hearing. [81]

Mr. CHENEY.—Marked as an exhibit.

COURT.—Counsel offered that on the trial, Mr. Cheney, merely offered on that preliminary hearing and that doesn't make it an exhibit on this trial unless reoffered.

Mr. CHENEY.—You don't consider that as an exhibit on this trial because offered before?

COURT.—No exhibits at the trial before are a part of this trial unless they are reoffered.

Mr. CHENEY.—Well, if the Court please, we will state our position in this matter. We will object to the introduction of any evidence on this trial as to what steps they have taken to obtain title to this ground since the fish-trap was driven there by Mr. Alexander a year ago. Whatever steps they took prior to that time, of course, when the injunction was denied last spring is competent to go in in this case, but anything that they have done since that why isn't competent to go in because if the plaintiff—if the defendant was there rightfully at that time, why there is nothing now that they could introduce that would change the situation, and any way we will object to the introduction of a whole lot of matter here on this trial as to what steps they have taken because it is immaterial. If they have got their final certificate, that is the thing they should introduce on this trial. Now, on the last trial of this case, your Honor, I maintained, you will remember, all through the trial that they had absolutely no title to this ground and when the decision—there was no question about the law; they hadn't even filed an application in the United States Land Office; they hadn't even filed a plat in the United States Land Office. No plat on file there at that time. There was some kind of a plat lying in the Land Office but never had been marked "filed." No application had been filed. No scrip [82] had been filed there with them. At that time they had absolutely no more title to that land than I had or Mr. Alexander or anybody else. I think that was the condition of the case at the time of the last trial. Now, if they can go on and let a

man build on there and then subsequently obtain title and try to oust the defendant on that kind of evidence, it wouldn't be—they couldn't be permitted to do a thing of that kind, and I say any way what is the difference what steps they have taken? If they haven't received their final certificate they are no better off than they were before. If they have their final certificate, let them introduce it, and I think we ought to know right now whether they have their final certificate or not. I don't know as I made myself plain. I say anything they can show now that they have done before Mr. Alexander put his trap there and started to use it and started to fish with it, they could introduce that now; could introduce it before. But any additional evidence, why we object to it. Of course, if they had the final certificate in the last trial and introduced it, they could introduce it now. But they had nothing to show any title on the last trial and I don't think they could introduce it now, and any way, what do these steps, which he states as true, amount to if it doesn't result in anything; if he doesn't get his final certificate and he says he hasn't got it?

COURT.—I am not certain at this time just how far the doctrine of relation might apply, having initiated proceedings to procure patent prior to the beginning of suit and subsequently obtaining patent. I am not just prepared to say how far the right that he subsequently acquired might relate, but I will hear the evidence.

Mr. WINN.—Yes, sir. The Land Office in several well-considered [83] cases, just lately rendered



840
 Barron vs Alexander
 Offs Ex ac
 Rec'd in
 R. B. C.
 Read in
 Court on March
 2nd 1909

PLAT
 OF
 U. S. SURVEY No. 80-4
 OF THE
 S. A. Homestead Claim
 UNDER ACTS OF MAY 14, 1898 AND MARCH 3, 1903
 OF
 V. A. ROBERTSON

SITUATE
 On Chatham Strait about
 2 miles south of Flinjer Bay

DISTRICT OF ALASKA

SCALE OF 2.00 CHAINS TO INCH
 VARIATION 31° 00' EAST
 AREA 5.27 ACRES

AS
 SURVEYED BY

Charles F. Davidson

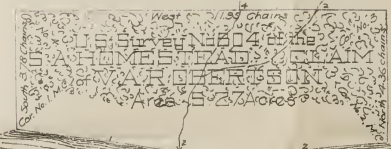
U. S. Deputy Surveyor
 October 31 and November 1, 1908.

The original field notes of the survey of the Soldiers Act
 claim Homestead (claim of V. A. Robertson)

from which this plat has been made, have been examined and
 approved, and are on file in this office, and I hereby certify
 that they furnish such an accurate description of said claim
 as well, if incorporated into a patent, serve fully to identify
 the premises, and that such reference is made therein to nat-
 ural objects and permanent monuments as well as perpetual
 and for the LUCUS thereof.

And I further certify that this is a correct plat of said
 claim, made in conformity with said original field notes of
 the survey thereof. And the same is hereby approved
 Surveyor General's Office
 Juneau Alaska, July 16 1909.

Signed W. M. Dutton
 Surveyor General of the District of Alaska.



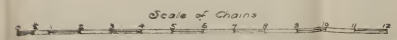
CHATHAM STRAIT

Certificate
 Office of the U. S. Surveyor General
 Juneau Alaska, March 20, 1909.
 I hereby certify that the area here
 delineated is a full, true and correct
 copy of the original and approved
 plat of the survey of said tract on
 file in this office.

W. M. Dutton
 U. S. Surveyor General of Alaska

U. S. Monument No. 804
 5.78 Chains

Meanders	
By	Distance
1182.57	6.16 Chains
214.86	0.56 Chains



and in which case it was held that *when sent* a surveyor out it segregated it from the public land and then nothing in the world could keep you from getting a patent provided, of course, you complied with the law and no other claim within eighty yards and is not on a forest reserve, and to show that this patent, if offered in evidence, was dated November 28, 1908, which, of course, antedates any claim that he ever made here, and I expect to bring it down to the present time, and any proof we may show of his receiver's certificate may be all right but anything—

Mr. CHENEY.—In regard to that matter, I would just like to say that this survey was a private survey by Mr. Robertson and I claim that what the Land Office wants with a private survey is made regularly; doesn't segregate the land and doesn't confer any title. It was made in 1908 by private survey. They have changed the land rules now, but when they did that Mr. Robertson made this survey simply as a private survey.

COURT.—I will hear the evidence.

Mr. CHENEY.—Of course, there is nothing now offered.

Mr. WINN.—I have offered this in evidence and ask if you have any objection, and I ask that this exhibit be marked as an exhibit in this case.

COURT.—You still renew your objection?

Mr. CHENEY.—Yes.

COURT.—May be admitted and marked.

Mr. CHENEY.—Exception.

(Marked Plaintiff's exhibit "A.")

Mr. JENNINGS.—Let me understand. Do you offer that plat as showing the claim you claim now, or the land claimed by you at the time you started that work there; had the survey made?

Mr. WINN.—Why, this is the claim we are claiming now. We [85] have claimed it and our title dates back to 1908, in respect to the time Robertson initiated the survey. I am going to prove—we have a deed to this property and in fact the application has been made out in Mr. Barron's name. The application in fact is made in Mr. Barron's name. This is the origination of our title and I expect to show, as the Land Office says and repeatedly says—I am not mistaken about it, because they were my cases. I will bring the cases up to show. At the present time after you initiate a survey, if you go on and use ordinary diligence, such as the Land Office simply requires, and if you are not on a timber reserve and not in conflict within a space—within so many rods of it, you will then ultimately succeed provided you have gone on there in good faith and are prosecuting your claim for patent as quickly as you can. Nobody can adverse us now, because the time for an adverse claim has expired and the proof will be shown; that the proof has been filed in our showing that is required, and he is about ready to send up the papers; simply going on to show what we have done and the kind of title filed. Want to rebut any general statement they might allege and want to show title, or you couldn't convey it, that is, unless

(Testimony of C. B. Walker.)

had some right to the upland.

Mr. CHENEY.—Suppose this application counsel is making about a case in point—he can try before the Court. Mr. Burton didn't apply for this remedy at all when this case was tried and when we built our fish-trap.

Mr. WINN.—We will show we have a deed from Robertson and before Alexander ever thought of fishing this place except for the Alaska Packers' Association. [86]

Mr. BURTON.—The deed was offered in evidence.

Mr. WINN.—We will follow it up.

COURT.—The Court will determine these matters. I will admit the evidence and I will hear you after the evidence is all in.

Q. (By Mr. WINN.) Now, I will ask you, Mr. Walker, if there has been any application for patent made and filed in your office for the ground embraced in United States Nonmineral Survey No. 804?

A. Yes.

Q. Did you give to the Court the date of that application for patent and in whose name it is made?

A. August 30, 1911, James T. Barron, the assignee of Richard J. Whitten, filed his application for patent for this tract and to the tract.

Mr. WINN.—If it please the Court, we don't want to deprive the Land Office of its papers, but we would like to have these papers identified and with the privilege of substituting a certified copy. I didn't know, of course, until the answer was filed in this case that they denied this title and denied these pro-

ceedings because the Land Office record absolutely shows they have been made there and I didn't suppose—

COURT.—Presume there is no objection to the evidence on account of the desire to submit certified copies?

Mr. CHENEY.—The only matter is if we should want to look at them, they wouldn't be here. I don't know what to think. If they want to introduce certified copies they ought to do it, for a month after trial, if introduced now and taken away to the Land Office, don't give us an opportunity to examine them.

COURT.—The Reporter can go down and copy them. Wouldn't be safe for the Land Office to deliver some of their original entries. [87]

COURT.—Whenever required the Reporter can procure *them, so long as proceed with this now.*

Mr. JENNINGS.—If the Court please, in order to shorten the record and to keep from making objections all through the case, I would like to state now that the complaint in this case alleges that on or about the 14th day of March, 1911, the above-named defendant entered upon the survey number 804 and upon the water in front of survey number 804 and built a fish-trap, and so forth. Our position is that anything done by Mr. Barron to secure title after March 14, 1911, after the case,—after the date when it is alleged we went on there and built a fish-trap and destroyed his ingress and egress is incompetent, irrelevant and immaterial on the ground that if he did that—if we had the fish-trap there when

(Testimony of C. B. Walker.)

he took those steps, why then he took those steps with the full knowledge that we had a fish-trap there, and if it be understood that our objection goes all through the record to any steps taken by Mr. Barron after that time, won't have to be repeating it all the time.

COURT.—I presume that may be understood.

Mr. WINN.—We are willing.

COURT.—Show that the objections go to all the entries concerning the title you have reference to—concerning the steps taken to procure title subsequent to what date?

Mr. JENNINGS.—The 14th of March, 1911.

COURT.—Very well; let that be so understood.

Q. (By Mr. WINN.) Now, Mr. Walker, the application for patent which you have just stated, that was made for the land embraced in this survey, is under what date? I want to get it so we can identify it to aid Mr. Robertson in getting copies of it, for we shall ask Mr. Robertson to copy these from the Land Office just as soon as he can and they are not [88] so long but what they can be gotten out, your Honor.

A. The date, then, the oath was issued to the applicant in the application—on August 25, 1911.

Mr. JENNINGS.—August?

Mr. WINN.—Now, the paper, if it please the Court, we offer it in evidence and in order to save reading in evidence—

Mr. JENNINGS.—Judge, in addition, as just stated, that this trap was actually finished on the 14th of March, so my objection will be admitted to,

(Testimony of C. B. Walker.)

say, the 14th of March, or up until the time that the trap was finished.

Mr. CHENEY.—And that was at the trial—I think the trial was on the 23d of March.

Mr. WINN.—Do you contend that the trap was completed on the 23d of March and never had anything to do with it afterwards?

Mr. CHENEY.—It is a matter we will discuss, as we claim it was fished, and used it all summer.

Mr. WINN.—I want you to state whether it was complete when that temporary restraining matter was up.

Mr. JENNINGS.—Well, just a moment. It is of considerable importance and I want to get the objection.

COURT.—Very well.

Mr. JENNINGS.—If the Court please, I guess that objection is all right. Its position on there can be well known.

COURT.—Very well. Proceed, gentlemen.

[Plaintiff's Exhibit "G."]

“Barron v. Alexander.

Plaintiff's Exhibit 'G'—R. E. R.

United States Land Office, Serial No. 01472

Juneau, Alaska. Receipt No. 4675

Filed Aug. 30, 1911. C. B. Walker, Register.

4-008-a.

Form approved by the Secretary of the Interior,
November 12, 1907. [89]

Department of the Interior.

SOLDIERS' ADDITIONAL HOMESTEAD
ENTRY BY ASSIGNEE.

U. S. Land Office, Juneau, Alaska, No. ———.
Application.

I, James T. Barron, (male), a resident of Port-
(Give full Christian name.) (Male or female.) (Give

land, Oregon, the legal assignee of Richard J.
full postoffice address.) (Give full Chris-

Whitten, beneficiary (or beneficiaries), under Sec-
tarian name of beneficiary or beneficiaries.)

tion 2306, Revised Statutes of the United States, granting additional land to soldiers and sailors who served in the Army or Navy of the United States during the War of the Rebellion, do hereby apply to enter the lands embraced in U. S. Surveys Nos. 202, 748, 749, 750 and 804, situate near Funter Bay, Alaska, containing 32.32 acres, within the Juneau Alaska, land district, as additional to the original homestead on the NE.1/4 SW.1/4 Section 18, Township 1 S. Range 20 W., Ark. Meridian, containing 40 acres; entered at the United States Land Office at Washington, Ark., per homestead entry (or entries) No. 465, dated January 22, 1868; and I do solemnly swear that I am a native-born citizen of the United
(State whether native born or naturalized; if naturalized, cer-

States, over twenty-one years of age; that I am the
tified copy of naturalization must be filed with this application.)

identical person named in the accompanying assign-
ment of Anna Dunne, the assignee of Richard J. Whitten, the original beneficiary (or beneficiaries) entitled to make soldier's additional homestead entry (or entries) of 80 acres of public land, under the pro-

visions of Section 2306, Revised Statutes, as additional to the original homestead entry (or entries), above described; that I purchased same in good faith and am now the holder and owner thereof; that I have not made an entry of public lands as such assignee, and that I have not [90] sold or disposed of said right of entry but that the same is vested in me unimpaired; that as such assignee I present herewith the said assignments, together with proof of right of entry granted to the said beneficiary (or beneficiaries) under the provisions of said Section 2306.

*I am well acquainted with the character of the land herein applied for and with each and every legal subdivision thereof, having personally examined the same; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor any deposit or coal, placer, cement, gravel, salt spring, or deposit of salt, nor other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of

*Note.—If applicant is not personally acquainted with the character and condition of the land applied for, affidavit as to character and condition may be made by any credible person having the requisite knowledge.

°°Note.—Every person swearing falsely to the above affidavit will be punished as provided by law for such offense. (See Sec. 5392, R. S., below.)

the year by any person or persons; that said land is essentially nonmineral land; that my application therefor is not made for the purpose of fraudulently obtaining title to mineral land; that the land is not occupied and improved by any Indian, and is unoccupied, unimproved, and unappropriated by any person claiming the same other than myself.

JAMES T. BARRON.

(Sign here, with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant in my presence before affiant affixed signature thereto; that affiant is to me personally known (or has been satisfactorily identified before me by ——); [91] that I verily believe affiant to be a credible person and the identical person hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in Juneau, Alaska, this 25th day of August, 1911.

GUY McNAUGHTON,

Notary Public for Alaska.

(Official designation of officer.)

My commission expires October 24th, 1912.

United States Land Office at ——

——, 191——.

It is hereby certified that the above application was this day received with the attached assignment of soldier's additional homestead entry that same might be noted on the tract books and further action thereon suspended until advice from the Commissioner of the General Land Office; that the fees and

commissions were tendered in full, and that there is no prior or adverse right to the lands applied for.

Register.

Receiver.

Revised Statutes of the United States,

Title LXX, Crimes, Chap. 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed."

(Note.—In addition to the above penalty, every person who, knowingly or willfully in any wise prosecutes the making or presentation of any false or fraudulent affidavit pertaining to any matter within the jurisdiction of the Secretary of the Interior may be punished by fine or imprisonment.)

#997. 1/82. 4-008a. Soldier's additional homestead entry by assignee. U. S. Land Office. No.

(Testimony of C. B. Walker.)

———. Application. Name ———. Date ———. Section ———, Township ———. Range ———. Notice of Action. (Space below for use in General Land Office).” [92]

Q. (By Mr. WINN.) Now, Mr. Walker, after the application for a patent was filed, that you have just referred to, what was the next step taken by Mr. Barron looking towards prosecuting his application to completion?

A. Well, the application, as I used the word, refers to more than the formal application to which Mr. Barron signed his name, but merely to other papers that I may enumerate here if you wish.

Q. Yes. A. There is—

Mr. CHENEY.—We object to that, because it is immaterial, if your Honor please—because, what is the use of introducing all these papers, if he can answer in one question just the condition of the title at this time in the Land Office. Mr. Walker can tell that in three words.

COURT.—Are you objecting to all the steps that have been taken and if you are willing to confess that the steps have been properly taken, that is providing—reserving your objection to its materiality or competency?

Mr. CHENEY.—Yes.

COURT.—But if you are willing to concede that the steps were properly taken, why I see no reason then in submitting the different papers that were necessary to procure patent.

Mr. WINN.—That will shorten the case quite

materially, your Honor, if they will admit that all the necessary steps which Mr. Walker will testify concerning have been taken without the introduction of the papers, will shorten the record.

Mr. CHENEY.—Up to a certain time. Mr. Walker can say they have completed their proof up to a certain point.

Mr. WINN.—Now, suppose he states all the proof has been supplied in the case which his office requires.

Mr. CHENEY.—Well, he hasn't issued any final certificate. [93]

COURT.—Well, are you willing to confess that whatever proof is necessary to procure patent has been regularly submitted to the officers—the Register and Receiver?

Mr. CHENEY.—Yes; we will do that only with our objection. It is immaterial.

COURT.—Certainly.

Mr. CHENEY.—And on the ground stated by Mr. Jennings with the objection.

COURT.—Yes.

Mr. WINN.—Well, then, if it is understood and agreed by and between counsel in this case that Mr. Barron, after he made his application for patent under the Soldiers' Additional Homestead Scrip Act for the property contained in United States Non-mineral Survey Number 804, has complied with the laws, rules and regulations and has submitted to the United States local land office at Juneau, Alaska, all the proof that is necessary up to the obtaining of a

(Testimony of C. B. Walker.)

receiver's certificate.

Mr. CHENEY.—Well, Judge, that is on the condition he is going to testify to that, of course.

Mr. WINN.—Well, he isn't if it is admitted.

Mr. CHENEY.—But I want to know if Mr. Walker says that isn't so.

Mr. WINN.—Why, no; you said that isn't so.

Mr. CHENEY.—We will admit it if Walker says so; maybe he isn't going to say so.

Mr. WINN.—Oh, I didn't understand. I thought you turned around and admitted that was true.

Q. Well, now, Mr. Walker, I will ask you to state if all the proof that is necessary to be offered for the obtaining—I withdraw that question. I will ask what proof on the part of Mr. Barron has been filed in your office that is necessary for you to forward the papers to Washington for the obtaining [94] of patent.

Mr. CHENEY.—Well, I should say how your question should be put in regard to that property. I beg your pardon.

Mr. WINN.—Of course, only went on for that purpose. If not, I will put it in the alternative.

Q. Explain what is lacking.

A. I would like to ask you, Mr. Winn, in the first place, Funter Bay is on the mainland, is it not?

Q. It is on Admiralty Island.

A. Well, assuming that, and I think that was stated at the time the application was filed that there is no question as to the priority and assuming that this is outside the reserve, or that it is in the reserve,

(Testimony of C. B. Walker.)

and you are a claimant there prior to the reserve order and that there is no question as to that, as to the right of the claimant as against the Tongass National Forest interests, the papers or the proofs as filed are all that this office would require if there are no other objections in issuing a final certificate. The proofs are sufficient to permit the issuance of a final certificate in my judgment and certificate would be issued were it not for the fact that the—the evidence of the right of the original holder of the additional soldier's homestead right, namely, the soldier in the application of Mr. Barron, is not submitted with the case, except by referring to evidence, which I presume is in the General Land Office.

Q. Well, now, you know that this island is not in any forest reserve, don't you, Mr. Walker?

A. Well, you worded your question in such a way that I thought that I had better assure myself as to that.

Q. Well, I have—I thought that was sure, your Honor. I can show that there isn't any question of timber reserve in this case, but I don't know whether you can tell by looking at [95] this map or not, Mr. Walker. It is a map we have here which is termed "Lynn Canal, entrance to Point Sherman, Alaska." It is a Government chart. I simply refer to it so you can identify it. Now, then, here is Funter Bay. Here is this fish site in controversy.

A. This is Hawk Inlet. Then, it isn't in the Forest Reserve.

Q. This is Hawk Inlet. It isn't shown here. This

(Testimony of C. B. Walker.)

map don't show what it is.

Mr. BARRON.—There is no forest reserve.

Mr. WINN.—Well, Mr. Walker has just answered that. For the reason the witness has answered a question concerning this map, if it please the Court, I desire to have it marked for identification.

Mr. CHENEY.—Hasn't got this marked on it. Just a chart.

Mr. WINN.—Just a chart of Lynn Canal and Point Sherman.

Mr. CHENEY.—What did Mr. Walker say about being in a forest reserve?

Mr. WINN.—Said it was not in a forest reserve.

COURT.—May be marked Plaintiff's Exhibit "B" for identification.

Q. What additional answer do you desire to make, Mr. Walker?

A. Why, I think my answer is sufficient unless Mr. Winn wishes more.

Q. (By Mr. WINN.) Now, I understand you, then, to say, Mr. Walker, since you have examined the chart that I have just presented to you and finding that this land is north of Hawk Inlet, that it is not in any timber reserve?

A. No; it is not in a timber reserve.

Q. Then, all the proof that is necessary under the laws, rules and regulations so far, and so far I mean as any orders that you have had from the Department up to date, Mr. Barron has complied with the law with respect to pursuing his title up [96] to the issuance of a receiver's certificate, with

(Testimony of C. B. Walker.)

the exception of what you mentioned about this scrip? A. Yes, sir.

Q. Yes. Now—

Mr. JENNINGS.—I note an exception, Judge.

Mr. CHENEY.—The witness answered something wrong about the soldier's scrip or something.

Mr. WINN.—Isn't anything wrong about it. If it please the Court, at this time, we desire to have this assignment—

WITNESS.—This is the assignment.

Q. What is this?

A. That is the application.

Mr. WINN.—We desire to offer in evidence, if it please the Court, this assignment of the scrip which Mr. Walker has just testified concerning for the reason that we want to show the plaintiff used—in our explaining this situation about the scrip.

COURT.—It may be received. Any objection?

Mr. CHENEY.—Is that the one?

Mr. WINN.—Yes; that is the one he testified concerning.

Mr. CHENEY.—I understand. May I ask the witness a question?

COURT.—Certainly.

Q. (By Mr. CHENEY.) Mr. Walker, I understand that the soldier's scrip isn't here; wasn't filed in your office?

A. Only—only the assignment from the last owner of the right to Mr. Barron is with the papers and on that assignment is a reference to the case in another land office and consequently to the case in the

(Testimony of C. B. Walker.)

General Land Office where the further evidence of the right, I presume, will be found.

Q. But you are not sure of that?

Mr. WINN.—Well, I understand now. If you will just wait, I am going into that. [97]

COURT.—Yes.

Q. (By Mr. WINN.) Now—

COURT.—You offer that in evidence?

Mr. WINN.—Yes.

Mr. JENNINGS.—We object, incompetent, irrelevant and immaterial.

COURT.—Objection overruled. May be received. (Plaintiff's Exhibit "C" marked and received.)

Mr. WINN.—We may now ask, if it please the Court, that the Reporter be permitted to copy this in the record or make a copy of it so not to deprive the Land Office of these papers, as I understand Mr. Walker wants to send up the papers right away—the proof has been completed.

COURT.—Very well.

[Plaintiff's Exhibit "C."]

“Barron vs. Alexander, Plff's. Ex. C.

Rec'd in Ev.—R. E. R.

For proof of claim, see application of Andrew Wigeby, of Shelby, Montana, assignee of Richard J. Whitten, filed at Great Falls, Mont., for SE.1/4 SW.1/4, Sec. 31, T. 32 N., R. 1 E., M. M., 40 acres.

United States Land Office,

Juneau, Alaska,

Filed Aug. 30, 1911.

Serial No. 01472

Receipt No. 4675

C. B. Walker, Register.

ASSIGNMENT BY ASSIGNEE.

Whereas, Richard J. Whitten, who made original homestead entry of the N. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 18 T. 1 S. R. 20 W. Arkansas, of which the NW. $\frac{1}{4}$ SW $\frac{1}{4}$ was canceled Aug. 12/72, for conflict, at Washington, Arkansas, on Jan. 22, 1868, and is entitled to enter 120 acres additional public land under the provisions of Sections 2306 and 2307 R. S., U. S., has executed proof papers, and assigned such right of entry to the undersigned, by an assignment in writing, dated June 27, 1908, and the undersigned has sold 80 acres of such right of entry [98] to James T. Barron.

FOR VALUE RECEIVED, I, Anna Dunne, assignee of the original beneficiary, Richard J. Whitten, do hereby sell, assign and transfer unto the said James T. Barron and his heirs and assigns forever, 80 acres of the said right of entry, and authorize the said James T. Barron, his heirs and assigns, to make such entry of public land and receive patent therefor.

I further state, under oath, that I purchased said right for a valuable consideration and that I have made no other sale or use of the same and that I was the bona fide owner of said right when this assignment was made.

Signed, sealed and delivered this 3d day of Dec., 1909.

ANNA DUNNE. (Seal)

Witnesses:

- (1) JAMES DEERING.
- (2) TED E. COLLINS.

(Testimony of C. B. Walker.)

State of Montana,
County of Lewis & Clark,—ss.

On this 3d day of Dec., 1909, before me, personally came Anna Dunne, to me well known as the person who executed the foregoing assignment, and acknowledged the foregoing assignment to be her act and deed for the purposes therein named; and being duly sworn, says the foregoing statements are true.

JAMES DEERING,
Notary Public for the State of Montana, Residing at
Helena, Montana.

My commission expires April 19, 1912.

(James Deering—Notarial Seal—State of Montana.)”

Q. (By Mr. WINN.) Now, Mr. Walker, in regard to this assignment which we have just offered in evidence, I understand that it purports to be an assignment by—it is Mrs. Dunne? [99]

Q. Anna Dunne. Well, purports to be an assignment from the assignee to Mr. Barron of the remainder of some scrip that has been offered in some other application for patent in some other land office other than the land office at Juneau? A. Yes, sir.

Q. Yes. Now, I will ask you if it is not a fact that such application, if it is made, would be in the United States Land Office at Washington, D. C.?

A. Yes, sir; it would.

Q. Now, what—what is your next step that you take with these papers that you have now? You say

(Testimony of C. B. Walker.)

the proof of the case incumbent upon Mr. Barron to make has been complied with. What is the next step to be taken so far as your office is concerned with the proof that is now—which has been submitted to that office?

A. With regard to this particular—

Q. Yes, sir. A. —particular case?

Q. Yes, sir.

A. I would send it to the commissioner with—with possibly a statement that there is no adverse claim of record in the office against it.

Q. The time for adverse claim has expired, has it not, Mr. Walker?

A. I think so; yes, sir; it has expired.

Q. Now, I will ask you, Mr. Walker, if the practice in your Land Office has been such that for instance if a piece of scrip of the kind that is in question in this case should be filed in your office on an application for a patent in any particular given survey and then all that scrip sent on with that application for patent to the General Land Office, that the same applicant or the assignee of the first applicant can still come in your office here and make application [100] for patent on the residue of scrip that may be left over from the first application for patent?

A. Yes, sir.

Q. That has been done? A. Yes, sir.

Q. Many times here, has it not, Mr. Walker?

A. It has been done quite often.

Q. Yes, sir. You know it has been done through your office on some occasions, do you not?

(Testimony of C. B. Walker.)

A. Yes, sir.

Q. Applications for patent. Now, then, should this application for patent go back to Washington, sent to the Commissioner's office and it should be ascertained that there wasn't any scrip there in that office to cover this particular survey. I will ask you as to whether or not that, under the practice, if Mr. Barron would not be permitted, after notice being given him, to cover this with any other scrip he might buy?

A. Yes, sir; it occasionally—circumstances like that have occurred and they have permitted, as they term it, a substitution of valid scrip for scrip which is found to be fraudulent.

Q. For instance, Mr. Walker, I will ask you if the practice in your office, where there is uncertified scrip of this nature, is different from the practice which you have in your office with reference to the application of land under what is called re-certified scrip?

A. Well, these rights which have been certified by the Commissioner, when filed in the local office, permit the issuance of certificate of title and when no certificate has been made as to the validity of the right, the local officers are not allowed to issue the certificate. A reference is made to the Commissioner for his determination of the validity [101] of the right.

Q. Of the scrip? A. Yes, sir.

Q. Of the right. I see. Now, I will ask you if this is the reason that you are now unable to issue a certificate to Mr. Barron, is that the scrip isn't here in your office?

(Testimony of C. B. Walker.)

A. That and the possibility that the basis of the right there itself may be uncertified.

Q. Scrip? A. Scrip.

Q. I understand where certified scrip is used that is certified—what is it, by the Commissioner's office?

A. Yes, sir.

Q. Commissioner of the General Land Office. Then in that case when the proof has gone so far as the proof in this case and you have the proof here in that now, you would issue his final receiver's certificate? A. Yes, sir.

Q. If it is uncertified scrip, or in the condition this one is in, you would forward the papers back to the Commissioner's office to ascertain whether or not the scrip is good, or, as in this case, to find out whether or not the scrip he refers to in that assignment is in that office? A. Yes, sir.

Mr. WINN.—You may cross-examine.

Cross-examination.

Q. (By Mr. CHENEY.) Mr. Walker, when was Mr. Barron's application first filed in the Land Office for this survey number 804-B?

A. August 30, 1911.

Q. That is the first application that you have in your office [102] of record of Mr. Barron's application for this survey number 804-B?

A. Yes, sir.

Q. It is the only application you have?

A. It is the only application; yes, sir.

Q. And there is no scrip, I understand, in this office at this time as a basis for this application?

(Testimony of C. B. Walker.)

The scrip itself isn't there?

A. Well, the assignment is part of the collection of proofs, that is termed by some persons scrip, and others as soldier's additional homestead rights. Now, part of that proof is here.

Q. But, you don't—what I want to get at is, you don't call that, Mr. Walker, actual soldier's homestead scrip, do you? It isn't, is it?

A. I don't use the term "scrip" at all, if you will permit me, but that is a portion of the evidence of the soldier's right which would be filed with this here and, of course, that is if all the proofs of the original right and its assignment through various persons to Mr. Barron were here, this is one of the assignments that would be presented.

Q. And if they were here in proper form, with the right as you call it—with all scrip and the assignments thereof were made—on file in your office, then you say you would issue a final certificate?

A. I would if—if the—if all these proofs had been certified to as evidence of the right to the given amount of acreage in Mr. Barron or rather in one of his assignors. The certificate might relate to the original soldier or to someone thereon subsequent to his assignment.

Q. And all you intend to do now, I understand, is to forward these papers to Washington; that is, you don't intend now [103] to issue final certificate at this time? A. No, sir.

Q. But you intend to forward the papers to the General Land Office at Washington? A. Yes.

Q. Now, Mr. Walker, you stated that should it be

(Testimony of C. B. Walker.)

found that there were—there was no scrip or right, as you call it, on file in the General Land Office at Washington, that other—that other—other scrip, unused scrip, recertified scrip might be accepted in lieu of this? A. Well, I have only—

Q. That is a matter which is left for the General Land Office. You don't state that—it wouldn't be your own action, that is, what I want to get at?

A. No; no.

Q. Whether or not they were going to do that would depend on the officer at Washington and not on yourself whether that was done?

A. Yes; it would be a matter for the Commissioner to settle.

Q. Yes; that was what I wanted.

Q. (By Mr. JENNINGS.) Mr. Walker, you have there the papers of all the steps taken by Mr. Barron towards his— A. Yes, sir.

Q. I wish you would tell what necessary—what steps have been taken, either by Mr. Barron or by Mr. Robertson. What is the date of the first step taken by either Mr. Robertson or Mr. Barron after the first day of March, 1911, the date of the assignment from Robertson to Barron? When did Barron take the next step, either Barron or Robertson? When was the next step taken in your office after that date?

A. So far as the record shows the first action of Mr. Barron towards securing title to the land was the filing of the [104] application on the 30th of August, 1911.

COURT.—Is that all, gentlemen?

(Testimony of C. B. Walker.)

Redirect Examination.

Q. (By Mr. WINN.) Now, wait,—I will ask you what time was the plat, which you have here, which is a copy of the certified plat which we have offered in evidence in this case and marked—just withdraw that question. I will ask you what date was the plat of U. S. Survey number 804, of which Plaintiff's Exhibit "A" in this case is a copy, filed in your office?

A. The plat or survey shows only the date June 17, 1909, which is the day following the date of the Surveyor-General's certificate and I have no doubt that the plat was received in the Land Office on that date and that is the—was intended for the filing date, although it was not signed by the Register.

Mr. CHENEY.—I object to that, if the Court please, and ask that it be stricken. Just simply stating it was intended to be the filing date—unless he was the man who actually received that plat; how it was put into his hands and what other officers—

Mr. WINN.—Well, now, he wants Mr. Walker to go to the extreme—going down to his office and find the exact date. I will recall Mr. Walker for that exact purpose.

Q. Can you state positively, after examining the records of your office, what time the plat was filed there, Mr. Walker?

A. No, sir; the information I would gather there I don't think would be any more than what I gather from the plat.

Q. (By the COURT.) Let me ask you, Mr. Walker, is it customary merely to give the date that such plats are filed in your office without adding the

(Testimony of C. B. Walker.)

certificate of the Register thereto? [105]

A. Generally, the plats are filed with a filing stamp and with the signature of one of the officers, but in some cases they haven't been filed in that way. This is one of them.

Q. You are certain though that is the date of the actual filing? A. Yes, sir.

COURT.—The objection may be overruled.

Mr. WINN.—Just a minute, your Honor. Mr. Dudley simply stated he put the date on there while he was Register and he can testify to it.

Q. Now, Mr. Walker, have you in these papers that you brought up, in your office, the deed from Robertson to Mr. Barron? A. Yes, sir.

Mr. WINN.—This is the paper. I forgot, your Honor, to offer this deed from Robertson to Barron. I didn't know it was in these papers until just now.

WITNESS.—You asked for the deed?

Mr. WINN.—Yes; from Robertson to—

WITNESS.—Only the abstract here.

Mr. WINN.—You say—I thought that the original deed was with these papers, your Honor, but it isn't. But we will offer the certified copy—better than the abstract of title.

Mr. CHENEY.—Was this here offered in evidence? Have you offered this in evidence?

Mr. WINN.—No; a certified copy already in.

Mr. CHENEY.—I want to object to it and have a chance to cross-examine Mr. Walker on that about this filing. I know that map wasn't filed in that office and I can prove it.

(Testimony of C. B. Walker.)

Mr. WINN.—Mr. Dudley is here and has got his filing mark on it.

Mr. CHENEY.—Wasn't marked filed to the present time.

Q. (By Mr. WINN.) Now, you were questioned by Mr. Cheney in regard to what the Commissioner of the General Land Office [106] does with respect to ascertaining the validity or invalidity of scrip or an assignment. I will ask you if it hasn't been the custom of that office, the General Land Office, if any uncertified scrip or assignments of this nature were found not to be good to notify the parties and give them opportunity to supply good scrip?

A. Yes; it has.

Q. It has never been made a ground of disallowing the application for patent, to your knowledge, has it, Mr. Walker?

A. I don't recall any case where an application has been filed and then rejected for failure to furnish valid rights.

Q. Yes, sir. The fact is that this uncertified scrip comes to you in such a questionable shape that you don't grant a final receiver's certificate and that is always left up to the Commissioner of the General Land Office from the records there to say whether that soldier was entitled to any number of acres of land, and the purpose issued, and so forth, of that nature? A. Yes, sir.

Q. Now, Mr. Cheney questioned you about the scrip. Now, this scrip, what is it? Is it not issued just the same way that a certificate of stock in a cor-

(Testimony of C. B. Walker.)

poration is issued, Mr. Walker; or is it or does it serve any different purpose than to make up the right of the party to take up land under it?

A. Well, the evidence of the right in a usual case are consulted, or, first, the evidence of the service of the soldier in the Civil War, also the evidence of his homestead entry prior to 1874 and then the assignments by himself, or his heirs, or administrators, or his estate, to other persons for given areas, or subsequent assignments by them to various persons and finally to the—to the man who uses the right. [107]

Q. Then, ordinarily—referring to plaintiff's—this assignment that has been offered in evidence in this case and marked Plaintiff's Exhibit "C"—is that considered part of the proof of the right that Mr. Barron might have to take up this land under that scrip? A. Yes, sir.

Q. And it simply informs you that there is a balance of scrip in the Land Office that has been left over from some other entry sufficient to cover this tract of land? A. Yes, sir.

Mr. WINN.—That is all.

Recross-examination.

Q. (By Mr. CHENEY.) Mr. Walker, do you claim that this little mark up in the corner of this plat is the—is the file-mark of your office—all plats that are filed there at the same time with an application for homestead entry of land—that little thing there constitutes a file-mark?

A. I don't claim that was filed in connection with this application.

(Testimony of C. B. Walker.)

Q. No; you don't claim that is a file-mark; just that stamp June 17, 1909?

A. Mr. Cheney, I have every reason to believe it was placed there for that purpose, and they might for some reason have overlooked the matter of formally signing it, verifying the date by the officer's signature.

Q. But your usual way is to mark it filed and you have a stamp that says "filed" and there is a place for the officers of the Land Office to sign?

A. Yes, sir.

Q. Yes. You will remember—I will just ask you—I don't [108] know whether you remember—about a year ago when this case was tried before, I came down to the Land Office and asked you and Mr. Mullen if anything filed in connection with this survey and Mr. Mullen told me nothing but a map that had been left there a year or two before, but never filed it because no scrip on file or no application on file? A. I don't recall no such circumstance.

Q. Were you here?

A. I think I would have remembered it if it had occurred.

Q. Were you here last March? A. No.

Q. I don't claim the conversation occurred with you. A. No; I wasn't here last March.

Q. I don't know whether you were here or not. What is it? A. I wasn't here in March.

Q. And you say— Well, isn't it the rule of your Land Office if anybody brings a map down there of any kind and they haven't presented any applica-

(Testimony of C. B. Walker.)

tion or any scrip there, you wouldn't file it as a document filed in your office until the application was produced?

A. In homestead cases—in cases of this kind, in fact in all homestead cases, the claimant does not file his individual map or survey. That is not a map. That is part of the records in this case. They are part of the proofs furnished by Mr. Barron, that is the—

Q. Oh, I see.

A. —that is the Government quadruplicate plat or survey.

Q. I see. It isn't part of the records in this case?

A. No, sir.

Mr. CHENEY.—Well, that is all then. [109]

Redirect Examination.

Q. (By Mr. WINN.) Well, now, let's get at that again, Mr. Walker. How does your office become possessed of these copies of the application—copies of the plats of the survey in any cases or application for title under this Act—Soldier's Additional Homestead Scrip?

A. That was sent to the office by the Surveyor-General.

Q. Yes, sir. A. And is kept on file.

Q. Well, what do you mean by this not being a part of the records? Is this a copy of the map that was sent to your office by the Surveyor-General?

A. It is the map itself.

Q. It is the map itself, that was sent there. Now, as I understand, Mr. Walker, that these surveys

(Testimony of C. B. Walker.)

occur, have to pass through the Surveyor-General's office there and have the examination there and so forth have to be made of them. After they get through it and the surveys approved, and so forth, and then the Surveyor-General forwards to your office—is it a triplicate—duplicate of it. So is it a copy of the plat as approved by the Surveyor-General? A. Yes, sir.

Q. They sent that down? A. Yes, sir.

Q. Did they send the field-notes with it?

A. No; the field-notes of the case belong—that is, one copy of them is given to the applicant and he files his field-notes.

Q. And then there is likewise a copy of it—a plat like this required to be posted on the claim, isn't there? A. Yes, sir.

Q. On the claim. And this plat you have testified concerning [110] came to your possession the way you have indicated?

A. I have every reason to believe it did. It is similar to other cases and invariably a plat dated in the Surveyor-General's office under his certificate on one day gets to our office on the next or subsequent day.

Q. Well, then this map is part of the record, though, in the matter of the application for patent taking all the papers together, isn't it?

A. Yes, sir.

Q. Part of the record? A. Yes, sir.

Mr. WINN.—That is all, your Honor. I would like, if it please the Court, if Mr. Walker could let this stay if he is going until Mr. Dudley was put upon

the stand and I will prove—want to prove this filing mark; prove unquestionably it was the date came into the office.

Mr. CHENEY.—No dispute on my part that that map was in the Land Office, but I claim it was never filed in the Land Office and isn't customary for them to file it until the production of the scrip.

Mr. JENNINGS.—That is just exactly what they have to prove. They don't have to produce their scrip.

Mr. CHENEY.—It was lying there for the last two years in the drawer in the office.

Mr. WINN.—If he is going to testify, probably knows more about it than the Land Officials. I don't know. If you will leave it there.

Mr. WALKER.—Well, in regard to this assignment, is that in shape so that I can take it with me?

Mr. WINN.—Well, Mr. Robertson wants to copy this in the record.

COURT.—Well, Mr. Walker wants to take it. No particular [111] hurry, are you? Mr. Robertson can copy it some other time. Call your next witness, gentlemen.

Mr. WINN.—Mr. Dudley. [112]

[Testimony of John W. Dudley, for Plaintiff.]

JOHN W. DUDLEY, being duly called and sworn, testified as follows on behalf of the plaintiff:

Direct Examination.

Q. (By Mr. WINN.) Mr. Dudley, you have just heard the testimony of Mr. Walker in this case. I will ask you if you had any connection with the appli-

(Testimony of John W. Dudley.)

cation of Mr. Barron in this case for patent to the property in question and—I don't mean your official connection—but whether or not you have been acting for him in the procurement of patent in this case?

A. I have been his attorney in fact; yes, sir.

Q. Yes; that was what I thought. Now, there has been some question, Mr. Dudley, about a file-mark on a plat which purports to cover the ground embraced in U. S. Nonmineral Survey Number 805?

Mr. BURTON.—804.

Q. (By Mr. WINN.) —804-A—of which Plaintiff's Exhibit "C"—Exhibit "A" is a copy, and there is some question about the notation June 17, 1909, which is stamped in the corner of the plat which Mr. Walker has just testified concerning as being a part of the record in this application for survey. I will ask you if you know anything about that file-mark?

Mr. CHENEY.—Object to that, if the Court please, for the reason that Mr. Walker, the Register of the Land Office, has stated that this particular map that has a little thing there that counsel is questioning about now is no part of the record of this case; that is, the case of James T. Barron as applicant for this survey number 804-B. Well, now, if that is no part of the record there—if already has his copy in evidence—that is in evidence—why it is certainly immaterial to put this in evidence. The only [113] object that counsel can possibly have in this thing is to attempt in some way to show that he initiated his proceedings for title before August 30, 1911. Now, Mr. Walker has sworn that he filed his application

(Testimony of John W. Dudley.)

there in 1911, August 30th. That was the first proceedings taken to obtain title for this land in the Juneau Land Office. What he had begun in this other office, or I say as soon as got his copy is, don't add anything to it and I want to object to it for that reason.

COURT.—No; the witness was Register at the time this document was applicable to be filed and can't do any harm, Mr. Cheney, to have it determined just when this paper was filed. You contend—

Mr. CHENEY.—That it was never filed.

COURT.—You contend it was never filed and you contend also the inception really dates from the filing of the application. Counsel contends the inception really dates from the survey and that can be determined on the final argument. Objection overruled.

Mr. CHENEY.—Exception.

WITNESS.—You wish me to answer?

Q. (By Mr. WINN.) Yes, sir.

A. I placed that file-mark there.

Q. In what capacity were you acting at the time that file-mark was placed there, Mr. *Walker*?

A. I was Register of the Juneau Land Office.

Q. You heard Mr. Walker's explanations of how these plats come to the Land Office, did you not, Mr. Dudley? A. Yes, sir.

Q. And that is—what have you to say about that?

A. I corroborate his statement entirely.

Q. Now, I will ask you, Mr. Dudley, if you have ever been out [114] to the ground that is embraced in this—in this U. S. Nonmineral Survey Number

(Testimony of John W. Dudley.)

804? A. I have.

Q. When were you first out there?

A. On August 19, 1911.

Q. On August 19, 1911? A. Yes, sir.

Q. What was the occasion of your making a trip out to this ground?

A. I was posting the notices of Mr. Barron's application for patent.

Q. What, if anything, in the way of a structure did you see built out in front of this property?

A. I saw a fish-trap in operation. At the time I was there there was some one—some boat there brilling the trap, I believe; at least there was a boat there in front of the trap.

Mr. WINN.—I have a plat here, if your Honor please, that I desire to have Mr. Robertson mark for identification at this time.

COURT.—May be identified.

Mr. WINN.—I will show it to you. Marked for identification Plaintiff's Exhibit "D."

COURT.—Want to cross-examine the witness with reference to this map, gentlemen.

Cross-examination.

Q. (By Mr. CHENEY.) You know that file-mark, Mr. Dudley,—I call it a file-mark.

Mr. WINN.—Let me get that question withdrawn then. I will withdraw my question and Mr. Cheney is to cross-examine the witness upon the file-mark upon the plat, which I have just questioned him about and which the record— [115]

(Testimony of John W. Dudley.)

Q. (By Mr. CHENEY.) Why do you call that a file-mark, Mr. Dudley?

A. In June of 1908, the year before the Department instructed our office as to a new method of filing papers and of marking the filing and they had changed the system of records in the General Land Office, at that time and from July 1, 1908, we were instructed to place a filing date in the upper corner of the left—upper left-hand corner of any paper filed, a serial number and receipt number being placed in the other, in the upper right-hand corner, before the papers were transmitted to Washington.

Q. So, if a paper was actually filed in your office you were instructed to put a date up in the corner?

A. Up in the upper left-hand corner.

Q. No file-mark on this map. You can see no place marked "filed" and signed by the officer of that Land Office?

A. No, sir; that file was *upt* there—that date was put there for the filing date under this instruction from the General Land Office.

Q. Well, but I understood you to say when you filed papers of any kind in your office, when actually filed and marked "filed," you also put this stamp up in the corner?

A. No; I said that was done when ready for transmittal to Washington, when the final entry—

Q. You mean to say that was all you put upon documents brought down there and you actually filed them, you or Mr. Mullen, was that your custom or

(Testimony of John W. Dudley.)

was it your custom to put a stamp that says "f-i-l-e-d" on it?

A. No, sir; it was not our custom to put that stamp on after that date of July 1, 1908, with the word "filed" on it.

Q. You mean to say now that documents of this kind brought down there and have been filed with an application for patent, that haven't got the file-mark "filed" and date and then signed? [116]

A. Yes, sir.

Q. That just simply stand like that?

A. Yes, sir.

Q. You want to swear to that? A. Yes, sir.

Q. That all they have is this little mark up there?

A. May have been papers changed from the old system to the new and had a file-mark after they were folded on the outside, a file-mark, and then they were changed to the new system. All we did was to put the date in the upper left-hand corner.

Q. This map then is simply a quadruplicate or duplicate, or something, of a map certified to by General Distin as Surveyor-General? A. That is true.

Q. And left down there in the Land Office and was in the drawer, one of those lower drawers there, and laid there since 1909? A. Filed there.

Q. Nothing ever done there?

A. Until after approved Survey Number 804.

Q. No application filed?

A. No, sir; nothing of that kind.

Q. Until the date Mr. Walker just testified?

A. No, sir.

(Testimony of John W. Dudley.)

Q. (By Mr. JENNINGS.) You don't know it was?

Mr. WINN.—I don't care if both want to cross-examine—

Q. (By Mr. JENNINGS.) Nothing to show what it was to put that to; no application with it; no nothing; just a map? A. Just a map.

Q. Just a map came to your office and you put that away there; laid it away in the drawer and that was all was done? A. Yes, sir. [117]

Q. (By Mr. CHENEY.) Mr. Mullen was there in the Land Office at that time? A. At that time.

Q. He was there last March? A. Yes, sir.

Q. He was there all during the month of March when this case was tried a year ago?

A. I believe so; yes, sir.

Mr. CHENEY.—That is all.

COURT.—Any further use with this map, gentlemen?

Redirect Examination.

Q. (By Mr. WINN.) Yes, sir. I will ask you if this manner of putting this mark on this map was the general rule that was followed in the office and as indicated by your testimony, Mr. Dudley?

A. From July 1, 1908, on, and I don't know whether those instructions have been changed or modified since.

Q. And the instruction requested that these maps should be sent to your office down there after the Surveyor-General has got through with them and been approved there, doesn't it? A. Yes, sir.

Q. And these maps came in there just the same

(Testimony of John W. Dudley.)

as all other maps under like applications come in?

A. Yes, sir.

Mr. JENNINGS.—Just a moment. This map there you are talking about Mr. Walker is taking it away now.

Mr. WINN.—There is a certified copy of it.

Mr. JENNINGS.—That certified copy hasn't got the date up here in the corner.

Mr. WINN.—We will ask at this time, while the witness is on the witness-stand, to be permitted to place on the certified copy, which has been offered in evidence in this case [118] and marked Exhibit "A" the file-mark, which has just been marked "B," and so this will be a complete copy.

Mr. CHENEY.—If the Court please, that isn't competent. He is introducing testimony—that was introduced in evidence and is from the Surveyor-General's office.

COURT.—Evidently isn't a copy.

Mr. CHENEY.—Could they add anything more to the case to say of this—this is certified by General Distin and that is certified by General Distin.

COURT.—This isn't complete until it has every word contained in the other.

Mr. CHENEY.—Well, but this comes from General Distin's office, I understand. How could introducing that make it any different?

COURT.—Well, I suppose the reason, so long as the other was never in the Land Office and this was in the Land Office and the date of its receipt from

(Testimony of John W. Dudley.)

the Surveyor-General's office is indicated by the file-mark.

Mr. JENNINGS.—You want to introduce here a certified copy of the map that was filed in the Land Office. You don't care about anything—certified copy from General Distin's office.

Mr. WINN.—Why, they are the same thing.

Mr. JENNINGS.—Same thing except that date.

Mr. WINN.—This is a certified copy of it, except the date, of the original.

Q. What are these originals or duplicates?

A. No; the original is on file in General Distin's office. These are all duplicate copies.

Q. That is what they are?

A. And they are certified to as copies.

Mr. WINN.—I simply want to take the copy which we have offered in evidence, if the Court please, to shorten the record, to have added to there the words "June 17, 1909," [119] being the date both Mr. Walker and Mr. Dudley have testified concerning and then I have a complete copy after they examine or cross-examine the witness about.

COURT.—Very well, it may be done, but I don't see the necessity of it because the witness has already testified that is a copy of the map you have in evidence. Was filed in his office on—

WITNESS.—June 17, 1909.

COURT.——so I don't see the necessity of it.

Mr. WINN.—Counsel makes some objection, I thought would overcome. I will withdraw the offer.

COURT.—I don't think it is necessary.

(Testimony of John W. Dudley.)

Q. (By Mr. WINN.) Now, Mr. Dudley, I will ask you concerning a certificate which has been offered in evidence in this case,—an assignment; purports to be an assignment made by Anna Dunne?

COURT.—Are you now through with this map?

Mr. WINN.—But this is one of his originals. I want to get through with these before I can get to the other plats.

Q. I will ask you if you have seen that certificate, assignment, before? A. Yes, sir.

Q. Now, you was Register of the Land Office here for three or four years, weren't you, Mr. Dudley?

A. Yes, sir.

Q. You heard Mr. Walker's testimony concerning the use of assignments of this kind for the purpose of obtaining title to land, did you not?

A. Yes, sir.

Q. Now, I will ask you, Mr. Dudley, what, from your own knowledge of the practice of the General Land Office, both as being Register of the local land office and practice you have had [120] before the land office since, as in regard to certificates of this—like that—if you had anything to do with any of them, either in the practice of an official or as a practitioner?

A. Well, Mr. Walker has probably stated all the points in regard to them, as I understand.

Q. Well, now?

A. Such an assignment as that is a part of the proof of the soldier's right and, as stated in the heading of this paper, the remainder of this proof exists

(Testimony of John W. Dudley.)

in other portions of the General Land Office.

Q. And that also would appear in the Commissioner's office at Washington, would it not?

A. In all probability; yes, sir.

Q. Now, suppose, Mr. Walker, in the case of uncertified scrip or in the case of scrip for that *suppose* is invalid; that is, the proof or the right of the soldier to have issued to him scrip turns out to be invalid after the acceptance of an application for patent from this office to the Commissioner's office—what has been the practice and the custom or actions taken by the Land Office at Washington in such cases?

A. A letter is written to the local land office, directing them to issue notice to the applicant that so many days will be allowed in which he may substitute a valid soldier's right for the one which has been found imperfect.

Mr. WINN.—Do you want to question him about this paper any, Mr. Jennings, or—it is the original and Mr. Walker is waiting here, if you want to cross-examine?

Mr. JENNINGS.—Going to copy that in the record?

Mr. WINN.—Yes. Well, then, if not, I suppose Mr. Walker can take it. [121]

Mr. JENNINGS.—Judge, if you say you are going to copy it, if Mr. Walker is going to take it away—

Mr. WINN.—Why, the Reporter is going down there to copy it.

COURT.—Yes.

(Testimony of John W. Dudley.)

Q. (By Mr. WINN.) Now, I will show you a map or plat which purports to be a copy of some map or plat of U. S. Nonmineral Survey 804 and I will ask you if you have ever seen this paper before?

A. Yes, sir.

Mr. WINN.—Now, I will have it marked for identification. I don't want to offer it, because I will put Mr. Hill on the stand. He drew it.

Mr. CHENEY.—Is that the same one in evidence at the other trial?

Mr. WINN.—No; it is a new one. Have it marked for identification. That is it is a copy of some of the maps offered heretofore, except some additional data put to it.

COURT.—It may be identified, Judge, and then they can raise whatever objections they desire when you offer it.

Mr. JENNINGS.—I don't know *as has* been identified. The witness simply said he has seen it. Identified for what?

COURT.—I presume he desires to ask the witness with reference to it and have it marked as some particular exhibit for identification; subsequently identify it sufficiently by the man who made it; then offer it in evidence.

Mr. WINN.—Yes, sir; this is a little out of order I confess, but Mr. Dudley wants to get away. He is moving and I didn't want to keep him hanging around and didn't want him to stay.

(Plaintiff's Exhibit "D," marked for identification.)

(Testimony of John W. Dudley.)

Q. I will ask you, Mr. Dudley if, when you were out to the ground embraced in U. S. Survey Number 804, in July or [122] August, last, if you observed the construction of a fish-trap that is all in front of this land? A. I did.

Q. Was that the first time you had been upon these premises?

A. The first time I had been upon that survey; yes, sir.

Q. Now, I will refer you to this map and plat, which has been identified by you and marked Plaintiff's Exhibit "D" for identification, and ask you if the trap which was constructed there was in any manner constructed according to the drawing that is made upon this map and plat?

Mr. JENNINGS.—I object, if the Court please, no foundation laid for that—

WITNESS.—So far as I can see.

Mr. JENNINGS.——put a man on there and ask him if a fish-trap is constructed according to a certain map made by a surveyor when there is no evidence—

Mr. WINN.—Well, I suppose, if your Honor please, I had better call Mr. Hill on, unless your Honor will permit.

COURT.—No; with this map shown, the witness was on the ground—he may testify the same as anybody else whether this illustrates conditions there. He may answer.

A. This map appears to show the trap as it was located and about the position that I should judge

(Testimony of John W. Dudley.)

it occupies on the ground.

Q. (By Mr. WINN.) Now, I will ask you, Mr. Dudley, when you were out there at this time if you noticed as to whether or not the lead from the pot and fillers and heart of the trap that was being fished upon the ground extended out to high-tide mark, low-tide mark, or the upland, and how far it did extend?

A. When I was upon the ground the piles did not extend—

Mr. CHENEY.—Just a moment. We want to object to that as immaterial [123] because in August, 1911.

COURT.—Objection may be overruled.

A. When I was upon the ground the piles did not extend up to the low-water mark. I should judge it was about half tide when I was there, if I remember rightly, and there was some distance of water between the piling and the shore, but there was a cable stretched up to where, I should imagine, was the high-water mark and that was supported by a cross or shear, leading over this and anchored above it to some point apparently on the upland.

Q. What was there hung on this cable?

A. There was some cable such as used in the trap.

Q. Part of the lead of the trap?

A. Part of the lead of the trap, I should judge; yes, sir.

Q. Now, let me see if I understand you. I understand there was a cable that ran from the last pile in the lead of the trap out to this structure you say was up about high-tide mark? A. Yes, sir.

(Testimony of John W. Dudley.)

Q. And then on that cable from the last pile was strung web which finished out the lead of the trap?

A. Yes, sir.

Q. Now, how far, Mr. Dudley, in your judgment, was the last pile in the lead of that trap from the line of ordinary low tide, that is, I suppose, it is estimated?

Mr. CHENEY.—Object, if the Court please, because the witness has stated that he didn't know; he thought it was about half tide. I don't think it would be competent testimony.

COURT.—He may answer. He may give his testimony.

A. I couldn't say as to just how far it was to the low-tide mark from the last pile.

Q. (By Mr. WINN.) Oh, I see.

A. I should judge it was more than one hundred feet. [124]

Q. You wasn't there at low tide?

A. No, sir; I was not.

Q. Well, about—I will ask you this question: About what was the distance between the last pile that was in the lead to this structure that was on the upland or above ordinary high tide upon which the cable was stretched and there was some web hung—about what was the distance, can you say?

A. Well, it was somewhere in the neighborhood of 200 feet, I should say.

Q. Now, I will ask you as to whether or not this web that was hung on there taken in connection with the web that was hung on the piles from that point

(Testimony of John W. Dudley.)

on to the heart and filler of the trap constituted one continuous line of lead?

A. It appeared to be continuous.

Q. Now, I will ask you if you made any examination of this ground embraced in U. S. Survey Number 804 when you were there at this time so as to ascertain the corner posts of it? A. Yes, sir.

Q. Well, now?

A. I went to corner No. 2 and identified it before I posted the notice on the claim.

Q. Well, did—that was the only corner you looked for?

A. Yes; that was the only corner we looked for.

Q. What are the two corners mentioned along there that mark the meander of the line along the shore?

A. Is it 1 and 2?

Q. Well, what is it?

A. It is marked here 1 and 3, but that is an error. It should be corner No. 2 at the southwest corner of the survey. Here is corner No. 3. Just simply transposed those figures.

Q. I see. Now, I will refer you to the other certified copy, Plaintiff's Exhibit "A," and ask you to designate on that what [125] corner you discovered or posted your notice?

A. I began at corner No. 2, at the southwest—southeast corner of the survey and identified the mark on the rock and then we went northwest from that upon the upland and posted notices.

Q. Now, I will ask you—

Q. (By Mr. CHENEY.) Are you talking about

(Testimony of John W. Dudley.)

August or later? A. August, 19, 1909.

Q. August 19th.

Q. (By Mr. WINN.) 1909? A. 1911.

Q. I will ask you then, Mr. Dudley, referring to this Plaintiff's Exhibit "D" for identification, now, after you have located the corner of the claim that you have just referred to, as to how that trap was constructed, in your judgment, with respect to the way it is indicated on this exhibit for identification?

A. Apparently was constructed immediately in front of this survey.

Q. Well, in your judgment, how would you say it was constructed with reference to the drawing on this Plaintiff's Exhibit "D" for identification relative to the position?

Mr. JENNINGS.—Now, if the Court please, that simply is an attempt to have two witnesses swear as to how the trap looked; if it is correctly represented on the map. I think he has got a surveyor who went out there and is going to testify from courses and distances and now he is asking this witness, who so far as this case is concerned is unexpert at all—just submitted a map to him that purports to be made from an actual survey and asks him if that is about right. That is just what that testimony amounts to.

COURT.—Well, if that, as counsel stated here, is made from an actual survey, and it is perfectly competent to have [126] a half a dozen witnesses testify as to whether or not a certain picture or a drawing by any man portrays a certain state of facts.

Mr. JENNINGS.—That isn't a picture. Sup-

(Testimony of John W. Dudley.)

posed to be a map.

COURT.—That is true. Probably, is a map, but the same rule of evidence would apply which would justify a man describing whether a certain drawing was a picture, a correct picture of a house or whether or not this, by the lines indicated, correctly portrays or substantially portrays conditions as they exist on the ground. Of course, if it could be shown that the surveyor had every mark that is now on that map, was made by an actual survey and set—or every post indicated on there to have been placed there after an actual survey with reference to that specific thing was concerned, why, of course, wouldn't be any necessity for any other witnesses, but that isn't the case here.

Mr. JENNINGS.—Well, if the Court please, I don't think that was confined to whether they looked like a picture of the trap. The question was, as I remember it, whether that was a correct representation of—just read the question.

Q. (By Mr. WINN.) I will ask the question—how would you say with relation—you saw that trap upon the ground when you were out there—with respect to the ground on this survey—was it constructed with respect to the way it is indicated on this map and plat which you hold in your hand?

A. I believe that this map correctly represents the location of the trap as I saw it then.

Q. (By Mr. CHENEY.) Could I look at it a moment, Mr. Dudley?

A. Yes.

(Testimony of John W. Dudley.)

Q. (By Mr. WINN.) This is the only time, I believe, you have ever been out to the ground, Mr. Dudley?

A. I was out there in November following, in 1911.
[127]

Q. Did you take any notice of this trap then?

A. Yes.

Q. They weren't fishing it then?

A. They were not fishing at that time; no.

Q. How—do you remember there was just as many piles standing there in the lead—I don't refer to the heart, but in the lead—when you were there in November do you know or not? Did you take any notice of that?

A. I didn't notice particularly about that; no, sir; it was rather stormy and we made a hurried visit there to take the notice down.

Q. I believe you said you posted the notice and plat upon the property, and what was the occasion of your trip back there in November?

A. It was to see that the plat and notice had remained posted during the period of publication.

Q. So, could make the necessary affidavit?

A. So, to make the affidavit; yes, sir.

Mr. WINN.—I see. That is all, your Honor.

COURT.—Cross-examine.

Recross-examination.

Q. (By Mr. CHENEY.) Mr. Dudley, you are the attorney for Mr. Barron in the—in the application for patent for the homestead survey number 804-B?

A. Yes, sir.

(Testimony of John W. Dudley.)

Q. You have been tending to that matter?

A. Yes, sir.

Q. You say you were there on August 11, 1911?

A. August 19th.

Q. August 19th? A. 1911. [128]

Q. Do you remember what time of the day it was when you observed the conditions of the water there around that trap?

A. I think it was in the morning.

Q. What time of the day?

A. Well, pretty close to noon. I don't remember just now the time.

Q. Well, as near as you can put it, Mr. Dudley?

A. Well, say eleven o'clock.

Q. About eleven o'clock in the forenoon on the 19th? A. I think so; that is my recollection.

Q. You didn't measure the water? A. Oh, no.

Q. You are just testifying from your observation of the trap and the shore line, and so forth generally, as it occurred to you at that day—appeared to you on that day? A. Yes, sir.

Q. You were there for some purpose in connection with the—with the survey that—

A. I was posting the notice of Mr. Barron's application.

Q. Yes. A. Notice and plat.

Q. Well, there wasn't any survey made that day when you were there nor any water measured? You wasn't there for that purpose? A. No, sir.

Q. You were just looking at a map now, made by Mr. Hill and you say it appears to you to correctly

(Testimony of John W. Dudley.)

represent the condition of the trap and the shore line and the survey there as it appeared to you on that day? A. Yes, sir.

Q. (By Mr. JENNINGS.) You know nothing about the angles and the distances at all on this map?

[129] A. No, sir.

COURT.—Any further redirect examination, gentlemen?

Mr. WINN.—That is all.

COURT.—That is all, Mr. Dudley. Call your next witness.

Mr. WINN.—Call Judge Winn. [130]

[Testimony of G. C. Winn, for Plaintiff.]

G. C. WINN, being duly called and sworn, testified as follows on behalf of the plaintiff:

Direct Examination.

Q. (By Mr. WINN.) You are the United States Commissioner for Juneau Precinct and also ex-officio Recorder of that precinct, are you, Grover?

A. I am.

Q. You have—what is the volume?

A. Volume 23 of deeds.

Q. You have volume 23 of deeds there. Is that a part of the official record of deeds, and so forth, in your office? A. It is.

Q. Have you any deed recorded in that book purporting to convey ground, and so forth, from V. A. Robertson to James T. Barron? A. I have.

Q. I wish you would just open the book and let me identify that. Included on that page? A. Yes.

Mr. WINN.—We now offer in evidence, if it please

the Court, and request that the stenographer copy it in the record an instrument that—which bears date of the 8th day of March, 1911, from V. A. Robertson to James T. Barron, which covers the ground embraced in United States nonmineral survey number 804.

COURT.—What does the instrument purport to be—a deed?

Mr. WINN.—Didn't I say a deed? Purports to be a quitclaim deed from Mr. Robertson to Mr. Barron.

COURT.—Any objection.

Mr. JENNINGS.—Just a moment, your Honor, until I see what it is. [131] We object to the introduction of this deed, if the Court please, on the ground that it purports to convey a soldier's additional homestead claim situated on Chatham Straits, about three miles south of Funter Bay, and no foundation laid, no evidence at all, no evidence so far now to the effect that Robertson, the grantor of the deed, was the owner of the property attempted to be conveyed. The deed also attempts to convey a certain fish-trap site fronting said soldier's additional homestead of V. A. Robertson. No evidence introduced so far to the effect or tending to show that V. A. Robertson owned any fish-trap site which is covered by the deed.

Mr. WINN.—So far as the fish-trap site is concerned: I understand your Honor, that depends upon the proof. The deed is there that conveys the ground embraced in United States nonmineral survey number 805—

Mr. BURTON.—804.

Mr. WINN.— —804 from Robertson to Barron. The proof already shows that this survey was first made in the name of Mr. Robertson and was afterwards transferred to Mr. Barron.

COURT.—It may be received in evidence. Objection overruled.

[Plaintiff's Exhibit "F."]

“Barron v. Alexander, Plaintiff's Exhibit ‘F.’

Received in evidence—R. E. R.

KNOW ALL MEN BY THESE PRESENTS, That I, V. A. Robertson, a single man, of the city of Seattle, County of King, State of Washington, in consideration of the sum of One thousand Dollars (\$1000), to me paid by James T. Barron, have bargained and sold and by these presents do grant, bargain, sell and convey unto the said James T. Barron, his heirs and assigns, all of the following bounded and described real property, situate in the District of Alaska, to wit: [132] That certain soldiers' Additional Homestead Claim of V. A. Robertson, situate on Chatham Strait, about two (2) miles south of Funter Bay, on the shores of Admiralty Island, designated on the plat of survey of the same as U. S. Survey #804, as laid out and surveyed by C. E. Davidson, U. S. Deputy Surveyor, October 31 and November 1st, 1908, more particularly described in said plat of survey.

Also that certain fish trap site fronting said Soldiers' Additional Homestead of V. A. Robertson, above described, and heretofore located by the Alaska Packers Association, a corporation of the State of

California, situated on the west coast of Admiralty Island in Chatham Strait, at a point between Funter Bay and Hawk Inlet, which said trap was operated by said corporation in 1908, and was thereafter on the 8th day of March, 1911, sold and conveyed to the said James T. Barron, and described in the deed of conveyance to said Barron as situated 'at a point between Funter Bay and Hawk Inlet, about four (4) miles distant in a southerly direction from said Funter Bay,' together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all my estate, right, title and interest in and to the same.

TO HAVE AND TO HOLD the above described and granted premises unto the said James T. Barron, his heirs and assigns forever.

IN WITNESS WHEREOF, I the grantor above named, have hereunto set my hand and seal this 8th day of March, 1911.

V. A. ROBERTSON. Seal.

Signed, sealed and delivered in presence of us as witnesses.

WILLIAM STEWART.

W. REID. [133]

State of Washington,
County of King,—ss.

BE IT REMEMBERED, That on this 8th day of March, A. D. 1911, before me, the undersigned, a notary public in and for said County and State, personally appeared the within named V. A. Robertson, who is known to me to be the identical person described in and who executed the within instrument

(Testimony of G. C. Winn.)

and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.

N. P. Seal. FRANK I. CURTIS,
Notary Public in and for the State of Washington,
residing at Seattle.

Filed 9:45 A. M. Oct. 5, 1911, Book 23 Deeds, page 48.

G. C. WINN, Recorder."

Q. (By Mr. WINN.) The page—is on page 48 of volume 23? A. 23.

Q. 23.

Mr. CHENEY.—I suppose, your Honor, it is understood that isn't offered as any right of fishery there on the part of Mr. Barron. Want this on the record in this case, and in the last trial they didn't rely on any right of fishery there.

COURT.—I can't tell the extent of the purpose—of the offer in reference to that at this time, but if it later develops that the grantor had nothing to convey why the instrument can't do any harm.

Mr. CHENEY.—The deed was introduced on the last trial. Your deed was in evidence.

Mr. BURTON.—It was offered and withdrawn for the purpose of completing our proof in the Land Office.

Mr. CHENEY.—I knew it was offered. [134]

Mr. WINN.—That is all, Grover.

Mr. CHENEY.—That is all.

COURT.—Next witness, gentlemen.

(Testimony of Lloyd G. Hill.)

Mr. WINN.—Call Mr. Hill.

COURT.—Is Mr. Hill in the courtroom? [135]

[**Testimony of Lloyd G. Hill, for Plaintiff.**]

LLOYD G. HILL, being duly called and sworn, testified as follows on behalf of the plaintiff:

Direct Examination.

Q. (By Mr. WINN.) Your name is Lloyd G. Hill? A. Yes, sir.

Q. Mr. Hill, you were a witness, I believe, in this case when a hearing was had upon an application by the defendant to dissolve a temporary restraining order which had been granted in this case, were you not? A. I was; yes, sir.

Q. Now, prior to that time that—that you were called as a witness here for that, had you ever been on the ground embraced in U. S. Nonmineral Survey Number 805?

COURT.—804.

Q. (By Mr. WINN.) 804-A?

A. Yes, sir; prior to making that map I was over there on that claim.

Q. I will ask you if at that time, Mr. Hill, and while you were a witness upon the witness-stand upon the hearing to dissolve the temporary restraining order, if you identified what is called Plaintiff's Exhibit "C" that was offered in evidence in that case?

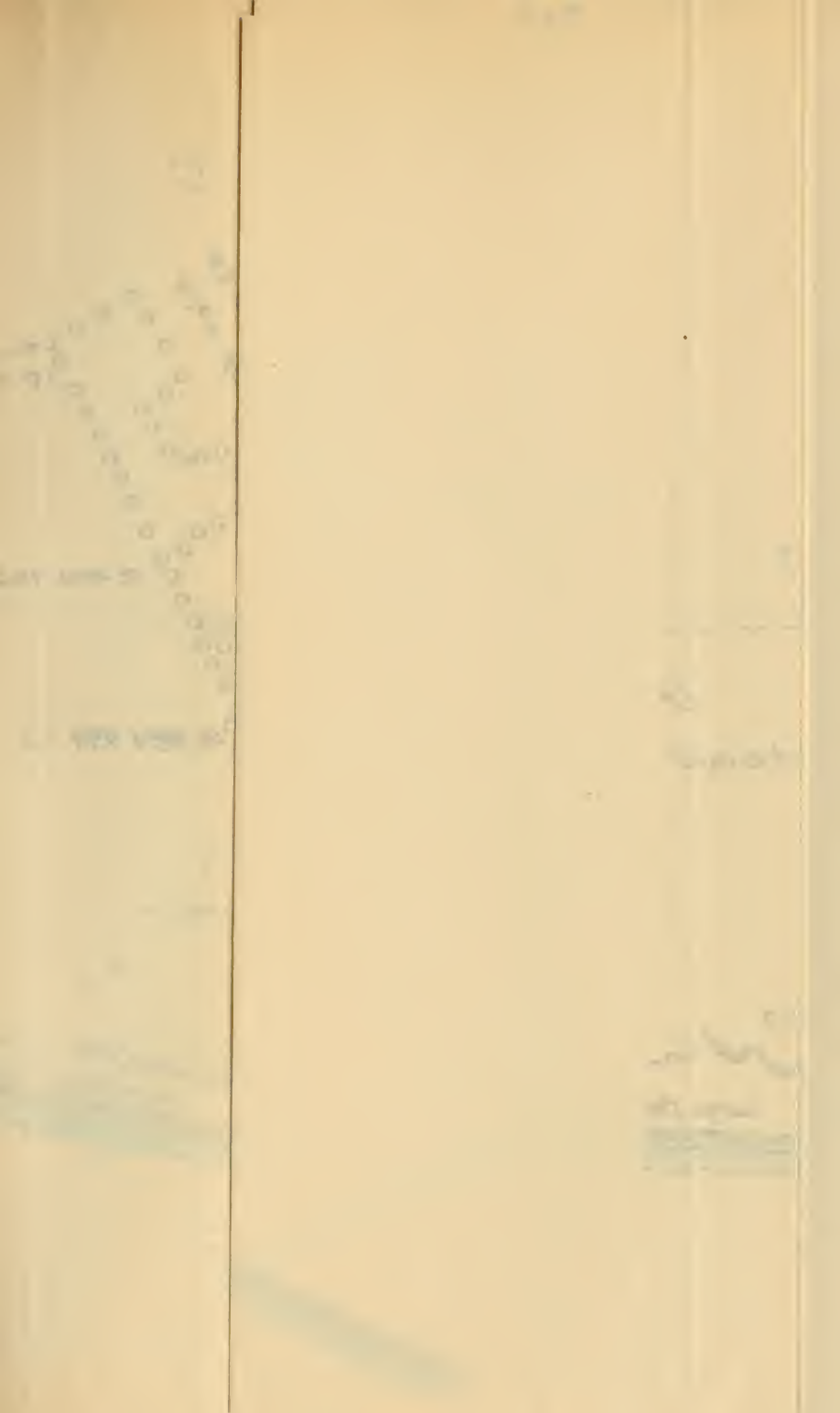
A. Yes, sir; I did.

Q. From what data, Mr. Hill, did you prepare that map and plat now which you have in your hand?

A. I prepared that from an actual survey of the

(Testimony of Lloyd G. Hill.)

ground. I determined the corners of the claim and collected the angles of the lead and located the position of nearly all the piles. Some was rather hard to determine the boat—out of the boat, but the piles extending towards the shore—the piles nearest the shore were determined accurately. [136]



(Testimony of Lloyd G. Hill.)

ground. I determined the corners of the claim and collected the angles of the lead and located the position of nearly all the piles. Some was rather hard to determine the boat—out of the boat, but the piles extending towards the shore—the piles nearest the shore were determined accurately. [136]

(Testimony of Lloyd G. Hill.)

Q. Well, I will ask you more in detail about that. I simply wanted you to identify the map.

Now, since he has identified it, your Honor, I offer it in evidence in this case.

COURT.—Any objection?

Mr. CHENEY.—This is the same map offered on the other hearing?

COURT.—Yes, sir.

Mr. CHENEY.—Oh, I guess we have no objection.

COURT.—May be received and marked.

(Marked Plaintiff's Exhibit "E.")

Q. (By Mr. WINN.) Now, Mr. Hill, I will ask you if you were on the ground or water in front of U. S. Survey 804 in order to get the data for the placing on this map and plat the structure there, that is called fish-trap, lead, and so forth? A. I was.

Q. What date did you go upon the ground to obtain that data? A. I think it was March 28, 1911.

Q. Well, what time was that with respect to the hearing had in this court upon the motion to dissolve the temporary restraining order?

A. Well, that was before, I think; yes, that was before.

Q. Well, you testified in that case and introduced this map and must have been before? A. Yes, sir.

Q. Well, now, what means did you use in ascertaining the manner in which that trap was constructed, the length of its lead from the pot and filler (spiller), and so forth, at that time?

A. I had a transit, chain, tape-line, and made an actual survey of it.

(Testimony of Lloyd G. Hill.)

Q. Who assisted you in that?

A. Why, I think I had some of the men from the cannery and some of the men on the "Anna Barron" to help me. [138]

Q. Anybody here as a witness with you?

A. No, sir.

Q. No one here that was with you at that time. Did you see Mr. Alexander out there at that time?

A. No, sir; I don't think I did.

Q. Well, was there anybody doing any work on this fish-trap when you were there?

A. No; it seems to be my recollection is no person there at all.

Q. Do you recollect any pile-driver?

A. No, sir.

Q. No boat; no pile-driver, there; no one?

A. No, sir.

Q. Now, the piles you have indicated upon this map and plat as being driven, a part of which constitutes and is the lead that was on the trap at that time and a part of which went there to make up the heart and the pot and the spiller of the trap,—did you ascertain the exact number that was there?

A. I counted the number of piles driven at that date; yes, sir.

Q. And what was the number?

A. Forty-three on March 28, 1911.

Q. Did you ascertain the length of the lead of this trap in from the pot and spiller? A. Yes, sir.

Q. Now, I will just ask you to take your map and plat and state to the Court what was the length of

(Testimony of Lloyd G. Hill.)

that lead from the—it is on a rectangular figure made by the driving of the piles up to the end of the lead?

A. I will have to scale it. Will be within—

Q. What I mean—from the word on this exhibit that is marked “ebb tide 21,” from that pile then on towards the shore to the end of the lead,—what is the distance?

A. I make that distance to be 110 feet, that is, extending from [139] the point marked “ebb tide” towards the high land, towards the beach.

Q. Yes. Towards the land, that is marked U. S. Survey No. 804? A. Yes, sir.

Q. Now, what was the entire length of the trap, that is over all, including lead and the triangular figure there, that may represent the pot and spiller, and other parts of the trap?

A. The entire length at that time was about 250 feet.

COURT.—What was the last question? I didn't get it.

Mr. WINN.—That was the entire length of the trap, your Honor, from here clear up to there as driven at that time.

Q. Now, you have placed on this map other objects; one of which is called a “reef” and another is called “bare rock at all times” and the land peninsula. Looking past there something extending out from the upland. What is this to the westward—to the westward? A. Southward.

Q. Southerly? A. Southerly or westerly.

Q. Southerly or westerly, from the land embraced

(Testimony of Lloyd G. Hill.)

in survey 804. I will ask you to just explain to the Court what those objects are and how you ascertained the relative distance of those objects as from the fish-trap constructed at that date? Just explain that to the Court?

A. I simply meandered the beach and located them by traverse; ran along the beach; and I also, of course, traversed the land directly in front of survey 804 and located the position of the reef by angles and measurements.

Q. Now, I will ask you as to whether or not they are correctly indicated upon this map as they are upon the ground from your measurements and calculations that you made? [140]

A. I think so; yes, sir.

Q. Then, is this map that you have there drawn according to a scale? A. Yes, sir.

Q. What scale placed on there?

A. The scale is 100 feet to the inch.

Q. Well, then any one could take a scale and ascertain the distance between the various objects that is indicated on there? A. Yes, sir; very closely.

Q. Do you remember the distance, Mr. Hill, without measuring from a line extended—from the extension—what is this? A. That is west.

Q. Say, the westerly boundary line of survey 804 as extended on a straight line out on into the water. How far would that line be from the closest pile of this structure called the fish-trap?

A. At that time, I think, 200 feet.

Q. Well, how far would it be from the other side

(Testimony of Lloyd G. Hill.)

line of survey 804, extended in a straight line on down into deep water, as indicated on this plat?

A. That would be—you are talking now about the prolongation of the east line?

Q. Yes.

A. The difference between that line and the side of the trap?

Q. Yes.

A. Well, that would be—the nearest pile would be about 460 feet.

Q. What, Mr. Hill, just without measurements, so we will have it before the Court, is the length of the entire side line, the lower side line of this survey—I mean take it on a straight line, approximately, along the waterfront—what water frontage is there to that survey? [141]

A. Well, there is about 800 feet, very closely.

Q. You mean in a straight line across or following the meander?

A. Following the meander would be about 800 feet.

Q. So; but I was talking about a straight line across? A. Straight line would be 788.7 feet.

Q. And the meander would be as you indicated?

A. Yes, sir.

Q. Did you make any soundings at the time you were out here on this fish-trap?

A. I did; yes, sir.

Q. State to the Court what soundings you made at that time and indicate them on this map and plat.

A. I made some soundings which I have shown here—soundings 33 feet.

(Testimony of Lloyd G. Hill.)

Q. Well, where is that?

A. That would be the southerly end of the trap.

Q. Yes.

A. About the northerly end of the trap or the northwest end 21 feet and up the line of the lead line continued 16 feet.

Q. Up to the end of the lead line as it existed—existed when you were out there on this trap that you have just mentioned? A. Yes, sir.

Q. (By the COURT.) That means ebb tide?

A. At ebb tide; yes, sir.

Q. (By Mr. WINN.) What time of the month was it then? A. That was March.

Q. Well, do you know whether there was—how the tide was? Now, the tide changes or varies during the month. You know it is a little higher at some times?

A. I think the tides were quite low.

Q. At that season of the year? [142]

A. Yes, sir.

Q. And this was low tide 16 feet?

A. Yes; low tide.

Q. Sixteen feet at the end of the lead as it was then constructed? A. Yes, sir.

Q. Now, then, did you make any examination at that time to find out the condition, Mr. Hill, of the—of the ground that was covered with the water and as to whether or not there was boulders there or anything of that kind? You made—

A. Yes; I could say; yes, sir. Of course, pretty hard to tell anything below the surface of the water, but the ground between low water and high water was

(Testimony of Lloyd G. Hill.)

very rocky, large boulders, three or four feet high.

Q. On what island is this?

A. This is on Admiralty Island; Admiralty Island.

Q. About how far from Funter Bay?

A. Well, I imagine five or six miles from the cannery in Funter Bay.

Q. You mean the cannery in which Mr. Barron is interested? A. Mr. Barron; yes, sir.

Q. On what side of Admiralty Island is it?

A. On the west side.

Q. What, Mr. Hill, is—well, I will ask you that island—I will withdraw that question because I believe this other map will show that. Now, I will ask you, Mr. Hill, if you made a trip to this locality at any other time other than the date you have just testified concerning? A. Yes, sir; I made a trip last week.

Q. Do you remember about what day?

A. I think it was the 11th; down there the 10th and 11th.

Q. Of March? A. March, 1912. [143]

Q. This year? A. Yes, sir.

Q. Did you make any other observations as to the fish-trap that was then standing upon the ground and also make any other soundings or anything of that kind?

A. I did; yes, sir; I made other soundings there.

Q. Who was with you?

A. Well, there was Captain Mason and the deck-hand on the "Anna Barron," named Steve, I don't know his last name; Mr. Barron, and Mr. Barron's two pilers—I think two pile-driver men.

(Testimony of Lloyd G. Hill.)

Q. Now, I will hand you, Mr. Hill, Plaintiff's Exhibit "D" for identification, which Mr. Dudley testified concerning, and ask you who drew this exhibit?

A. I drew this map.

Q. How did you get the data from which you drew the map, Mr. Hill?

A. Well, I had the notes from the former survey and what additional notes I wanted to take I made them from actual survey upon the ground.

Q. Who, if any one, aided you in making the soundings at that time?

A. Why, Steve, the deck-hand on the "Anna Barron," and two pilers and myself the last time, and the first time Captain Mason, and Mr. Barron. We were all present in the boat.

Q. Now, this map and plat which you have, marked D for identification, is just the same so far as the data thereon placed as is on Plaintiff's Exhibit "E," that is so far as they are extended on Exhibit "E"? A. Yes, sir; I think so.

Q. Then, you made some additional measurements and—how, Mr. Hill, did you find the structure that you had seen upon this ground, called the fish-trap, on your previous trip, with respect to the one you found when you made this trip [144] last week?

A. Well, the first time I was there the fish-trap was more or less incomplete?

Q. Yes.

A. The pot and the spiller and the heart—those things were not nearly as uniform as they are now and the lead line as it extended from the nearest end at

(Testimony of Lloyd G. Hill.)

that time toward the shore a distance of 261 feet.

Q. How many more piles are there in that lead than was there at the time that you testified upon the hearing on the motion to dissolve the temporary restraining order?

A. How many more—there is 14 piles has been—15, I think.

Q. Yes. A. One is out.

Q. And where have they been driven with respect to the end of the lead that you found, as you have testified to, and as it is marked on Exhibit “E”—where were they driven with respect—

A. They had been driven on the line of the lead as it then existed in a northeasterly direction toward the shore.

Q. Then it extended 261 feet in further toward the shore than it did when you were out there on that other trip? A. Yes, sir.

Q. And how many piles did you say had been put there? A. Fifteen.

Mr. JENNINGS.—How many feet did you say, Judge?

Mr. WINN.—261 feet.

Q. Was there web on the trap when you was there?

A. No, sir.

Q. Do you know anything about this web that was hung in from the last pile in toward the shore line that Mr. Dudley testified about? [145]

A. No, sir; I have never seen it.

Q. You didn't know anything about that. Now, Mr. Hill, you say in addition to making this estimate

(Testimony of Lloyd G. Hill.)

or count of the piles, and so on, you did some soundings there. Did you indicate to the Court what soundings you made and if they are represented on this exhibit? I wish you would point out to the Court.

A. I made soundings from the east corner of the fish-trap over toward the bare rocky point and from that point I then ran back a line of soundings toward the pile nearest inshore of the fish lead. From that pile I carried a range of soundings on a line through to what is known as U. S. Mineral Monument No. 804, simply as fixing the position of the soundings. The soundings are marked on here and were taken at low water on March the 11th of this year.

Q. The soundings as marked on this map or plat are just as you found them upon the ground, or are they different?

A. Just as I found them at that time.

Q. Yes. Now, this was what day—the 11th of March? A. Yes, sir.

Q. What depth of water did you find at the pile nearest the shore in the lead of the trap?

A. Eight feet. Is marked on the plat.

Q. What stage of the tide was it when you were there, Mr. Hill?

A. Why, the tides according to the tide table would be out, I think, at 1:50 in the afternoon, the low tide, and I started making soundings about 12:30. I completed them about one o'clock; so it wasn't quite—wasn't quite low tide.

Q. Yes. Now, do you know from an examination of the tide books as to whether or not the tide at that

(Testimony of Lloyd G. Hill.)

time of the month is less or greater than it is at other times of the same month? Have you examined the tide tables, and so forth, to ascertain that? [146]

A. Why, the tide—they were very short run-outs; not a low tide. The tide could be much lower. Take the June tides will probably run out 600 feet lower than the March tides.

Q. Taking then at the lowest tides, approximately, would leave about how much water or depth of water where that last pile is in the lead, that is, approximately, without calculating it?

A. Why, wouldn't be over two feet of water there at the very lowest tide.

Q. Well, ordinary low tide?

A. Ordinary low tide, probably be four or five feet.

Q. Mr. Hill, I see you have some indications on this map here that might indicate the contour of the ground. Will you just explain from this map or plat to the Court how the land embraced in survey 804 is along the lower line of it—along the water edge, that is, as to steepness or whether it is level? Well, explain the contour of the ground along there to the Court.

A. The ground abutting the waterfront of this claim is steep, rocky bluffs on the easterly portion, with the exception of a very little corner at the extreme east which is rather good ground; could be utilized; and the westerly part of the claim is very good beach and waterfront very fair at *law*—at low tide the area between low tide and high tide is covered by large boulders and rocks, but at extreme high tide

(Testimony of Lloyd G. Hill.)

there is quite a gravelly beach on the westerly.

Q. (By Mr. JENNINGS.) Which is north and south, and east and west?

A. North and south is there.

Q. Where?

A. Right up; looking right up this way. [147]

Q. That is north-or south?

A. And east or west (indicating).

Q. (By Mr. WINN.) How is the shore line within, looking—the boundaries of this claim from the—from where the line representing the lead of the trap, if extended, would intersect the shore on out at what—is that westerly? A. Easterly.

Q. Easterly end line of the ground embraced in the survey?

A. A prolongation of the lead line would intersect with the shore line, would leave 172 feet from the east corner of the claim.

Q. Well, how is that—how is the ground there—the shore—the shore line?

A. The shore is rough, very rough.

Q. Is it precipitous? What would you say? What is the size—what is the height of the bank there?

A. Well, it runs back quite bluffy and steep; yes, sir.

Q. And the other part of the shore line you was testifying to concerning a while ago, is that what remains between the intersection of the prolongation of a line of the lead out to the westerly end?

A. Yes, sir.

(Testimony of Lloyd G. Hill.)

Q. End line of the claim? A. Yes, sir.

Q. Survey number 804. Now, Mr. Hill, you have marked on this map and plat here—what is that covered by what? A. Covered by large boulders.

Q. Covered by large boulders. Is that where you say you found the boulders? A. Yes, sir.

Q. What is this line you have marked on there? Line of low tide? [148]

A. Dotted line is marked line of low tide.

Q. You mean as low tide was at the time you were out there? A. Yes, sir.

Q. The time you were out there, and you have ascertained that low-tide line was the tide was out when you was out there clear on across the waterfront in front of survey 804, have you?

A. I have; yes, sir.

Q. Is that accurately placed upon there?

A. Yes, sir.

Q. Have you indicated upon this map—I withdraw that question—I see you have the letters upon this map “Alexander lead line Mar. 28th, 1911.” I will ask you to state to the Court what you mean by that.

A. I mean that was the position of the piles on March 28, 1911, as I was informed they were driven by Mr. Alexander.

Q. But you wasn't informed as to how they were on the ground? You found that out by this trip you made? A. Yes, sir; I located that by survey.

Q. And that is the same piles you testified concerning on this other exhibit that was offered in on the motion to dissolve?

(Testimony of Lloyd G. Hill.)

A. Yes; I think they are in the same position.

Q. Yes. Now, did you notice any other changes there other than you have testified concerning, Mr. Hill? Just wait a minute—I want to withdraw that—that isn't a fair question. I will withdraw it. Oh, yes. I don't believe I had asked you, Mr. Hill, in regard to this map and plat the distance between the pot and filler (spiller) of this trap to the prolongation of the westerly end line of this survey?

A. Why, it is the—there seems to have been an addition made to it from the fish-trap that I saw there—it has been driven more to the westward; extended this way, which would [149] naturally decrease the distance between the west prolongation of the claim line and the beach—beach and the trap.

Q. Yes. Well, now, can you give to the Court the distance that you have there that you found on this last trip from this pot and filler (spiller) to this line that I have just mentioned?

A. Yes, sir; about 100 feet at present.

Q. And what did you find it when you were out there the other time?

A. I think it was 200 feet as I recollect my testimony.

Q. What was the distance between the pot and filler (spiller) and the lower end of the trap as you found it when you went out there last week and this first object you call a reef? Just give that to the Court so we can get it in the record.

A. The point of the reef that I succeeded in getting at that time the distance of 365 feet.

(Testimony of Lloyd G. Hill.)

Q. Yes.

A. And it was also that to the point; to the rocky point.

Q. Did you notice, Mr. Hill, the condition of this reef and also—that is marked “reef”—and also this peninsula that extends out as indicated on this map, which you have marked “covered at high tide” and “bare rock.” How these objects were at low tide as the tide was when you were there last week?

A. Yes, sir.

Q. Explain to the Court, then, how they were.

A. Why, they were bare. The passageway between the reef and the bare rock, was a little rock there, but I hardly couldn't go through there with a rowboat. The peninsula that extends out was, of course, all completely bare and it formed a very good shelter or harbor there. [150]



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Area 527 Acres
V. A. Robertson

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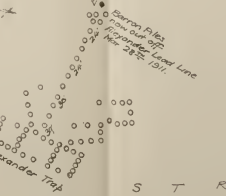
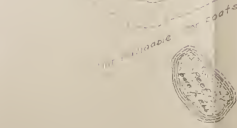
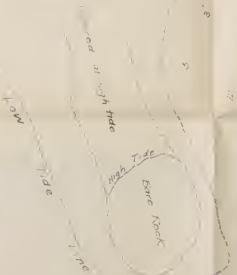
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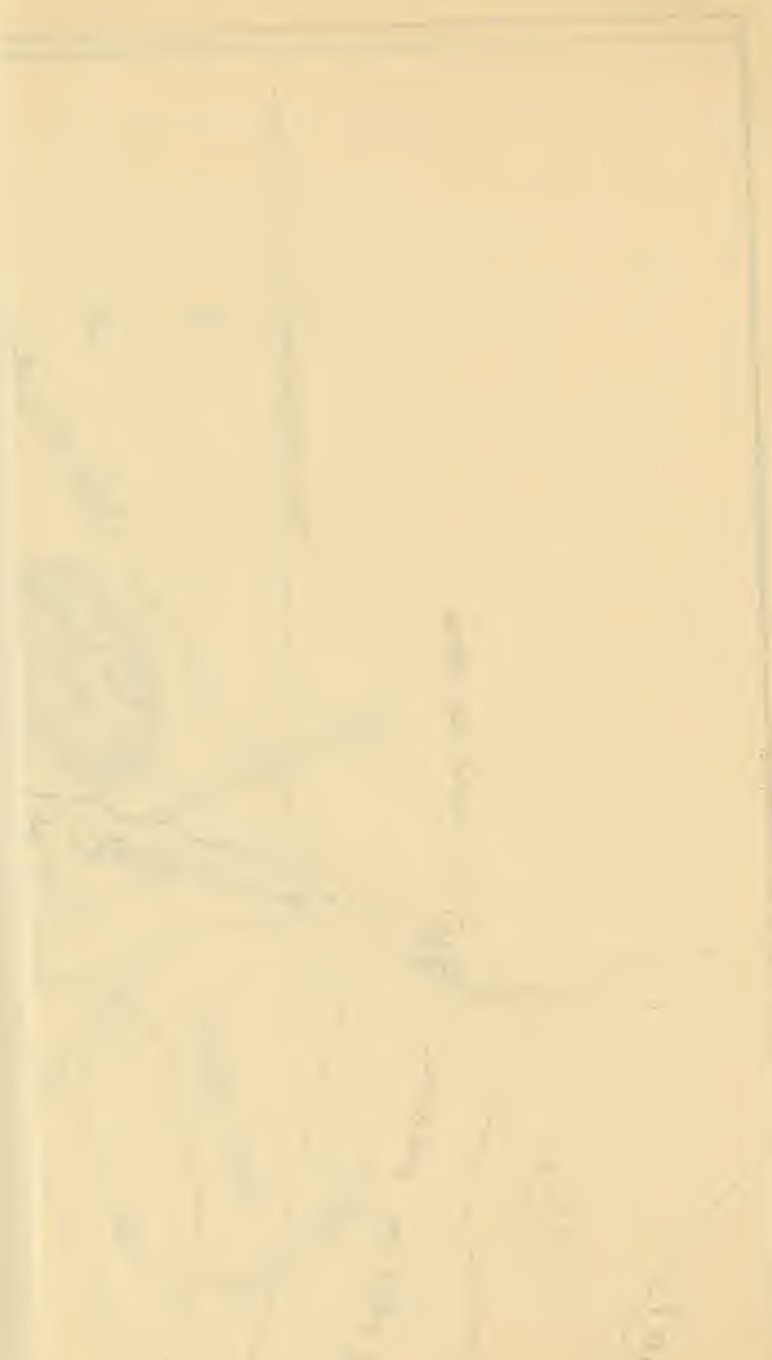
S T R A I T

49 5

NOTE
Soundings in Feet
Scale 100 FT = 1 inch

85

86



(Testimony of Lloyd G. Hill.)

Q. Did you also at that time make the soundings that is indicated, that commence from this bare rock and extend on towards the pot and filler (spiller) of the trap? A. I did; yes, sir.

Q. Are they—are they correct as placed upon this exhibit that you are testifying to?

A. I think so; yes, sir.

Q. I believe I will ask you to state for the sake of the record and the Court the entire length of the trap that you saw upon this location when you was out there last week. I mean including pot, filler (spiller), lead and all. A. 520 feet.

Q. As against how many feet when you were out there on the trip just before the preliminary hearing?

A. Against 250 feet.

Q. (By the COURT.) What were those figures again, Mr. Hill? A. 250 feet.

Q. Five hundred feet?

A. Was the first survey of 520; was the last 250.

Mr. WINN.—I think that is all, your Honor.

COURT.—Cross-examine.

Mr. WINN.—Well, I am going to offer in evidence now this exhibit from which Mr. Dudley testified and Mr. Hill and which was marked Plaintiff's Exhibit "D" for identification and ask that it be received.

COURT.—Any objections?

Mr. CHENEY.—No.

COURT.—It may be received in evidence and marked. Cross-examine.

Cross-examination.

Q. (By Mr. CHENEY.) Mr. Hill, what method

(Testimony of Lloyd G. Hill.)

did you use in ascertaining [152] the depth of the water where you have marked the soundings from the trap clear over to the point there, that last sounding? What method did you use?

A. I borrowed the sounding line, I guess they call it, off the "Anna Barron" marked every fathom.

Q. That is what you used in making the soundings?

A. Yes, sir.

Mr. WINN.—Mr. Cheney, would you let me ascertain from Mr. Hill one fact here I want to find out?

Mr. CHENEY.—Yes.

Q. (By Mr. WINN.) I think may be—did you give to the Court a while ago in answer to my question the entire length of—of the Alexander trap as you measured it when you were out there a week ago?

A. Yes, sir.

Q. Did you run from the lower end?

A. Yes, sir.

COURT.—Said 520 feet.

Mr. WINN.—What?

WITNESS.—520 feet.

Q. (By Mr. BURTON.) That is from here, is it?

A. Yes, sir.

Mr. WINN.—Well, I thought stated another, your Honor; thought may be there was some conflict.

COURT.—Proceed.

Q. (By Mr. CHENEY.) You say you used the sounding line from the "Anna Barron" to make these soundings? A. Yes, sir.

Q. And when you made your map and put these figures on the map, Mr. Hill, you were in town, in

(Testimony of Lloyd G. Hill.)

your office? A. Yes, sir.

Q. And when you—and put these on the map here how did you [153] find out where to put them on the map, that is, what method did you use?

A. Of course, we have a range line, you know, that fixes the position. We know where we are on the water. Of course, we have to estimate more or less the distance which we traveled; try to make it every forty feet. You can't do it absolutely accurate because of the swell, but you get it very close, and then you keep your range which is traveled between two points.

Q. And about every forty feet make a sounding?

A. Yes, sir.

Q. What did you do that with—a small boat or a large one? A. Small boat; rowboat.

Q. Rowboat? A. Yes, sir.

Q. What method did you use in measuring the distance—well, I believe you said the distance was 365 feet from this point of the reef you examined over to the trap? A. Yes, sir.

Q. And what did you use to measure that?

A. Well, I used two methods. I triangulated it and also took stadia readings.

Q. Took what?

A. Stadia readings; that is, by knowing the object which you sight on and having fixed wires you have, your distance is determined between those two points. Then, of course, you check your instrument before and after you get through your work. Know absolutely. You see the instruments are so reg-

(Testimony of Lloyd G. Hill.)

ulated, having a rod to sight on Every foot of the rod would indicate 100 feet on the horizontal measurement; used by the United States Government very extensively in all their plane table work. [154]

Q. And the other way, you say you triangulated?

A. Triangulated; yes, sir.

Q. Now, how did you determine the—I withdraw that—this map with the exception of these few measurements of the water and the indication or the extension of the lead and some of those things is the same map you testified to here a year ago?

A. Yes, sir.

Q. Made the 28th of March? A. Yes, sir.

Q. And you didn't determine on this last trip the location—you determined on the—the location of this reef for instance when you made your first trip last year, as you put it on the map?

A. Then, I determined again this time.

Q. You didn't go over the whole survey, did you?

A. I found all the important points again; yes, sir.

Q. You didn't go over all the map?

A. I didn't run the claim out again as I did the first time.

Q. What did you—how did you determine the location of this reef here—of this reef from this little peninsula as you have it there on the map? How did you determine that?

A. Why, I determined that by triangulation and by stadia reading.

Q. What direction is it, Mr. Hill, from the rock there that you have marked "bare rock"? What

(Testimony of Lloyd G. Hill.)

direction is this little reef from that rock? You have it the same—it is the same on that map?

A. It is southerly; southerly of that rock.

Q. Southerly direction? A. Yes, sir.

Q. That is the way you have it on the map?

A. Yes, sir; yes, sir. [155]

Q. Think that is accurate?

A. I think so. Of course, you understand the entire reef is pretty hard to get that; I was over it, you know. Perhaps there is a point on there which I considered, accordingly certain things you have to fill in.

Q. Isn't it a fact that is the highest part of that reef from this end of this little peninsula that is marked "bare rock" and isn't it a little west of south? Isn't it west of south?

A. Yes, slightly; don't think—

Q. It appears on the map there it looks as though it was a little east of south from your map, doesn't it?

A. Well, that map, I should say from the point it was due south to the point I took as here in the reading. The point I took—I took this edge of the reef, you see.

Q. What?

A. I took what would be the west edge of the reef and from the point on the shore which I took would be south. Then the reef trends in a easterly, south-easterly direction, that is the trend of the reef. Of course, it is covered with water and you can see the rock. You can go over it with a small boat.

Q. That is the only way you determined it?

(Testimony of Lloyd G. Hill.)

A. Yes, sir.

Q. So, this line of low tide you have marked on this last map, Mr. Hill, that is a sort of an estimate, isn't it?

A. Well, that is fixed in three different points. It is fixed at the prolongation of the east boundary of the claim; the prolongation of the west boundary to mean low water, and it is fixed by a point marked "250 feet" on this plat from the shore in to the lead; also fixed at another point marked "140 feet" from the shore end line; so it is fixed at four [156] different places.

Q. Four different places across the whole length of the survey? A. Yes, sir.

Q. Is it approximately correct with reference to the elevation or did you go into that? Did you take any certain level and then figure the extreme low and extreme high there of— A. Of the tide?

Q. Of high tide or low tide? A. No.

Q. Well, did you just do it from observation, Mr. Hill, as the tide was that day which—

A. Of course, I took the tide that day.

Q. Yes.

A. Then, I also took the tide from the tide-table for the very extreme low tides and, of course, they cover phases—a certain; they have a certain horizontal plane they take their tides from, and then when the tide is below that theoretical plane why you simply add your high tides to the extreme low tides and multiply up your ratio or ranges wherever you might be and you can arrive very closely to what

(Testimony of Lloyd G. Hill.)

the extreme low tide would be.

Q. Well, I say in this particular instance you didn't go to that trouble. You didn't determine your line you have marked on the map as low tide—that wasn't determined in that way?

A. That is absolutely determined in that way for that tide of March 28th.

Q. Although you said it was determined at these four places from actual objects on the ground?

A. Yes, sir; I had those four places in between, Mr. Cheney, to more or less just fill in.

Q. Yes. Well, that is, I think I understand, then you determined [157] it from actual observation of the tide at the four places you have mentioned, ascertaining the location of that survey as it was that day? A. Yes, sir; as it was that day.

Q. And *you* soundings here that you made you say were made about 12:30. That wasn't low tide?

A. Took some time to complete. I think took about half an hour.

Q. You finished about one o'clock?

A. I finished about one o'clock.

Q. And the tide-table showed that the tide would be low that day at 1:50 you say?

A. Yes, sir; and this, of course, is made on a basis of the low tides, you know. I was figuring that.

Q. Oh; you figured on that differently, did you?

A. Yes, sir.

Q. According to the tide-book?

A. Yes; figured on that.

Q. Well, the tide-book gives the tide at Sitka, not

(Testimony of Lloyd G. Hill.)

at Chatham Straits, doesn't it? Isn't there a difference? Did you figure on that difference?

A. Yes, sir.

Q. That is true; something like thirty-five minutes?

A. Well, there is very little; there is hardly ten minutes difference between—

Q. There isn't as much there as there is here?

A. No, sir; I think it is ten minutes. It is hardly observable.

Q. You have a measurement here of—well, it doesn't appear on this map—something that is on the other one—on this map that you made last spring, Mr. Hill, you have 330 feet from here over to there? A. Yes, sir.

Q. That doesn't appear on this map? [158]

A. No sir; I don't think so.

Q. You didn't measure this distance then only—you see the 365 feet?

A. Yes; I got a point right here.

Q. Where is that 365 feet?

A. I got a point right here from the corner of this trap—from the southwest corner of the trap to the shore directly in front of the point marked "bare rock" would be 365 feet.

Q. Yes. A. That is—

Q. But I say you didn't determine this distance on the last trip. This was determined a year ago?

A. Yes, sir; no, the reef I didn't.

Q. You didn't determine—

A. Didn't determine only just—

(Testimony of Lloyd G. Hill.)

Q. This doesn't show the last—do these represent the last piles that were driven since you were there last year? A. Yes, sir.

Mr. WINN.—Better indicate what exhibit you are talking from, Mr. Cheney.

Mr. CHENEY.—Well, I am talking from Plaintiff's Exhibit "D" for identification.

Q. And this represents on Plaintiff's Exhibit "D" for identification the last pile, Alexander's pile, as it stands now, that is this last trip that you made?

A. Yes, sir.

Q. And you think, Mr. Hill, that at extreme low tide there wouldn't be more than two feet of water?

A. I think the very lowest tide wouldn't be over two feet of water.

Q. That is, you said the June tide?

A. Yes. [159]

Q. The very lowest tide, if that is in the month of June, that is the tide you mean when you say there wouldn't be over two feet of water?

A. No, sir.

Q. Wasn't any tide in the month of March when wouldn't be over two feet of water?

A. Well, I couldn't say. Have to examine the book. Have to examine the tide-table, you know. I don't think there would be though; no.

Q. Oh. How far is it, Mr. Hill, from what you call the rocky bluff there, that little point—there is a kind of rocky point comes down?

A. Yes, sir.

Q. Indentation into the water, and how far is it

(Testimony of Lloyd G. Hill.)

from there over to the east line of the survey according to your map?

A. It is about—well, it is about 125 feet; I should say 100 feet.

Q. Well, now, I ask you if you examined that map which you made last year and was introduced in evidence—that map isn't correct, is it, as to the distance from—from where you run that line up over to the east line of the survey?

A. Yes, sir; I think it is.

Q. Isn't that a little short?

A. Yes, sir; I checked that over again this year. This time I was with Mr. Barron and Mr. Barron helped me.

Q. Did you measure from the rocky point over to the easterly or from where the extended line would be?

A. I measured from the corner marked No. 2 to the prolongation of the lead—its extension with the lead line.

Q. That is where you mean 125 feet?

A. No, 172 feet—125 feet, I thought you had reference to the difference between the little bluff country and corner No. 2. [160]

Q. I said that is what you say 125 feet?

A. Yes, sir; I think 100 feet; pretty hard to determine.

Q. But when I asked you the question I meant a little rocky place, let's see, about in here, on Plaintiff's Exhibit "C"—well, on the ground itself—isn't there a little kind of a rocky sort of prom-

(Testimony of Lloyd G. Hill.)

ontory? A. Yes.

Q. Well, that is what I wanted when I asked the question. How far from there over to that east line, if you know? A. Well, I don't recollect.

Q. I didn't mean—

A. That is about in the center of that kind of steep promontory; is about in the center of the claim; be about 400 feet.

Q. About 400 feet? A. Yes.

Q. There isn't much difference, Mr. Hill, in the beach there, between this part of the beach over here towards the east side of the claim and over here—there isn't much difference?

A. Oh, pretty rocky—

Q. Pretty rocky? A. —and boulders.

Q. As a matter of fact, the bedrock shows there quite plainly on what has been called in this case the sandy beach—the bedrock shows and great big boulders, high boulders show?

A. That is only between high and low tide. The beach is in water at high tide.

Q. Yes; I know—way above the line of high tide. Is this a little sandy beach? A. Yes, sir.

Q. But down here the land where the tide ebbs and flows it is real rocky? [161]

Q. (By Mr. JENNINGS.) The whole length of the claim from east to west? A. Yes, sir.

Q. Just about the same from the other end along?

A. Yes; just about; there are more boulders on the west side; larger.

Q. More boulders on the western side than on the

(Testimony of Lloyd G. Hill.)

eastern side? A. Yes, sir.

Q. And this Plaintiff's Exhibit "D" that you have been testifying from, I understand you to say that north is right to the top of the map and east is to the right and west is to the left? A. Yes, sir.

Q. Mr. Hill, what do you call the rocky bluffs—what have you located here on this exhibit "D," Plaintiff's Exhibit "D," that is just drawn from impression; from the eye; that wasn't triangulated or put there with any degree of accuracy at all, was it?

A. Well, to fix a thing when you are surveying along, you get a certain measurement—

Q. Yes.

A. —and right opposite you strike a bluff, and make a memorandum of that. It is more or less indefinite.

Q. It is more or less indefinite?

A. Just to show the position of those bluffs.

Q. As a matter of fact, let me ask you—doesn't the east end of that bluff cease—I mean doesn't what you have marked rocky bluffs there, that ceases before you get to the end of the lead, doesn't it?

A. Well, on the beach proper it would. On back any distance it is very rough and irregular, back any distance—I mean a point, say, in there would be bluff until here on the [162] beach it would be—would be to there from the bluff.

Q. But here—you have here and here there are nothing marked bluff at all—it is—there is no bluff, is there? A. No, sir.

Q. Did you take any soundings between what is

(Testimony of Lloyd G. Hill.)

marked there "Alexander's trap," between the line leading from what is called Alexander's trap to the shore, calling that one line, and then in considering the easterly side line of the claim—now, did you take any soundings between those lines?

A. Don't quite—I wish you would read that question over.

Q. I won't read it, but I will just ask—the question is accurately expressed. The stenographer will give it to you. In there I am talking about.

A. Yes, sir; I did.

Q. Where are those soundings—the record of them? A. They are in my note-book.

Q. Why didn't you put them on the map?

A. Well, I don't know. I could have.

Q. Well, you found the water just as good and deep there as anywhere else, didn't you?

A. Yes, sir.

Q. Plenty of deep water there?

A. Yes; pretty deep there.

Mr. CHENEY.—I would like to ask the witness a question, if your Honor please.

COURT.—Yes.

Q. (By Mr. CHENEY.) Mr. Hill, did you notice the bedrock along the shore there on the west side, towards the west end of this survey—see a lot of bedrock there?

A. Towards the west end of the survey?

Q. Yes. [163]

A. The bedrock seems to be about in the middle of the claim.

(Testimony of Lloyd G. Hill.)

Q. How far?

A. The bedrock is supposed to be about in the center of the claim; quite a good deal of it; it is just about in the center of the claim, I should say.

COURT.—Any further cross-examination?

Mr. CHENEY.—Nothing further.

Redirect Examination.

Q. (By Mr. WINN.) Now, Mr. Hill, maybe I didn't understand you, but did I understand that this line which is marked "line of low tide" as indicated upon Plaintiff's Exhibit "D," was figured out according to the extreme low tides of the year, or did you figure it as the extreme low tide of the date which you were on there?

A. That is the extreme low tide of March the 11th of this year, the way I measured it.

Q. And the sounding that you made to the last pile nearest the shore in the lead at that time was eight feet? A. Yes, sir.

Q. Do you remember or do you know approximately how far it is from that last pile out to the line of low water as it was on March—

A. Yes, sir.

Q. The 8th or 11th you was there?

A. The 11th.

Q. 11th. A. I was there the 10th and 11th.

Q. What was the approximate distance there?

A. 140 feet to the nearest pile.

Q. How is the water—does the water increase in depth from eight feet when inshore or become less?

(Testimony of Lloyd G. Hill.)

A. It becomes less; a foot or so less. In about the center, I think, it is six feet.

Q. Now, Mr. Hill, have you the soundings that you made on that—on the westerly—that is easterly, isn't it? A. That is easterly.

Q. On the easterly side of the lead line out to the extension of the—or prolongation of the easterly side line of the survey? A. Yes, sir.

Q. You have those? A. Yes, sir.

Q. Well, I wish you would get them and bring them to me sometime—that isn't in the record. Now, I will ask you, Mr. Hill, from the observations that you made there—what is this all down easterly from the prolongation of the easterly side line of the claim—what is there a clear sweep down there—land or water? A. Water.

Q. Of what? A. Waters of Chatham Straits.

Q. Now, this day—

This may be a new phase of questions I shall propound to him, your Honor, but I ask the privilege of asking him another question or so.

COURT.—Very well.

Q. (By Mr. WINN.) I will ask you if on this day you was there, there was any wind blowing outside on Chatham Straits as you went across?

A. The first day was very calm; the 11th was very windy.

Q. What direction was the wind blowing?

A. North; northeast wind.

Q. How was the water then in this cove or harbor that is made [165] by this reef that you have

(Testimony of Lloyd G. Hill.)

marked out here and the shore line opposite?

A. Yes; it was getting very rough; going down from Funter Bay down to the trap it was very rough, but as soon as we reached the trap why the winds all ceased. It was a good harbor; smooth, very smooth water.

Q. Well, state, from the topography of the country, the line of the shore line, the height of the hills, and so forth, what winds is this place protected from?

A. Quite protected in a north or northeast wind.

Q. (By Mr. JENNINGS.) North or northeast wind? A. Yes, sir.

Q. (By Mr. WINN.) Where? How?

A. The north wind comes right down, right down Chatham Straits. Chatham Straits is almost north and south and, of course, this affords quite a protection.

Q. Well, how would it with a southeasterly?

A. A southeasterly wind, it wouldn't be so good, I don't think.

Q. Well, how would it be with a wind from the easterly direction?

A. Easterly wind would be protected. Of course, this is just a very local plan; but a larger plan of Chatham Straits would show different conditions. The coast line, you know, changes very rapidly; have to go down—this is a very small scale.

Q. (By Mr. JENNINGS.) Now, just a moment. I want to understand his testimony. I understand you to say that the easterly wind you would be protected in that, or the wind blowing from the east or

(Testimony of Lloyd G. Hill.)

the wind blowing from the north, but the wind blowing from the southeast you wouldn't be so well protected? A. I say north or northeast wind.

Mr. CHENEY.—He didn't say from an east wind.

Q. You say all that way (indicating) be protected. [166] A. Yes.

Q. But blowing this way (indicating) wouldn't be protected?

A. I don't think would be protected so well.

Q. That is the wind blowing—

Mr. WINN.—If you will let me—I should prefer not to break up the record; get the testimony all broken up.

Q. Now, I have a map here, Mr. Hill. It is called 'Lynn Canal, entrance to Point Sherman,' which is a United States Government map. I wish you would locate on this map approximately, if you can, about where this fishing site is and explain about these winds covering the spot there and take the directions as they are indicated upon this Government map?

A. The approximate position of the fish-trap is marked by a cross on this.

Q. Well, say what side and what island it is on?

A. On the west side of Admiralty Island.

Q. Call the name of the peninsula?

A. Mansfield Peninsula; and about five miles from Funter Bay.

Q. Now, then, can you indicate there to the Court from the contour of that shore line and from the topography of the country, and so forth, as to what

(Testimony of Lloyd G. Hill.)

winds this cove— A. The north wind?

Q. Yes, sir.

A. The north winds then sweep down Chatham Straits, and, of course, is under this—in this little harbor, you are sheltered naturally, and a north-east wind—

Q. Yes. A. —would from the contour.

Q. Blowing off land?

A. Yes; a wind blowing off the land, you are protected; you are sheltered. [167]

Q. Well, what—this is south on the map?

A. That is south (indicating).

Q. And southerly winds blow hard in there?

A. Southerly wind would be very bad; wouldn't afford any protection for a boat; or a west wind, I don't think would afford much protection.

Mr. WINN.—Well, just a minute, your Honor. I think probably that is all. If your Honor please, this is just about the time to quit, and I presume your Honor will adjourn now. I want to get my testimony together. I shall not take very long in putting the direct testimony in this case.

Mr. JENNINGS.—You are through with the witness?

Mr. WINN.—Yes; I am through with him so far as I know.

COURT.—I just want to ask one question of Mr. Hill so I won't forget.

Q. So far as the topography of the country is concerned, I understand from your testimony that all the harbor which would be included within the pro-

(Testimony of Lloyd G. Hill.)

longation of the end lines of this claim is substantially equally protected, that is, the—the reef protects all the harbor from winds—all the harbor that is in this there substantially the same?

A. Yes, sir; yes.

Q. That is, there isn't any difference in one part of the harbor—I mean the harbor that is included within the prolongation of the end lines of this survey—every part is substantially equally protected from the wind?

A. Nearly; of course, the nearer you get to the shore the more protection you have.

Q. I mean out so far as the trap is concerned?

A. Yes, sir; I think so; yes, along on that line.

COURT.—Court will adjourn, gentlemen. [168]

Mr. CHENEY.—Are you through with the witness? Are you, Judge Winn?

Mr. WINN.—Yes.

Mr. CHENEY.—You said something about in the morning.

Mr. WINN.—I don't think I will.

Mr. CHENEY.—You don't want to recall him in the morning? If you don't I want to ask him another question then I will be all through.

Mr. WINN.—I don't want to say I will recall him, but I say that I think that is all I want now. I asked that we adjourn until to-morrow morning.

COURT.—Very well; proceed, Mr. Cheney.

Recross-examination.

Q. (By Mr. CHENEY.) I will ask you, Mr. Hill, when you examined that survey number 804-B if you

(Testimony of Lloyd G. Hill.)

checked the angle at the intermediate meander point on the survey, that is, the—that intermediate point between the two corners on the waterfront, whether you checked this point out there? A. Yes, sir.

Q. Did you find that correct? A. Yes.

Q. You didn't do that again this time? That was last year?

A. Last year that was. I simply ran the measurement off. I checked that up. I didn't turn the angle again.

Q. You didn't check the angle? A. No, sir.

Q. No; did you last year?

A. I did; yes; last year.

Q. You are sure you found that; you are *sure checked* it last year?

A. Well, that gave me the cross lead line. I had to determine [169] that the very first thing to fix the cross lead; yes, sir.

Q. I may—I don't know as I quite make you understand—I mean the angle between the two meander corners of the homestead survey; not the lead itself. Did you check that? A. Yes.

Q. The intermediate points? A. Yes, sir.

Q. You think you checked that?

A. I certainly ran that out to fix the line I had to have it on there when I was on the ground there. No one knew where the lines were.

Q. You didn't make the original survey?

A. The original survey; no, sir. I merely took that chart from the Land Office, or copy or plat and then had to find out the ground.

(Testimony of Lloyd G. Hill.)

Q. Do you know who made that survey?

A. I think Charlie Davidson.

Q. Sometime in 1909?

A. I don't know when it was made.

Mr. WINN.—The plat shows.

Mr. CHENEY.—That is all.

Redirect Examination.

Mr. WINN.—Well, there is one thing, if your Honor please, I want to call attention to and have it corrected accordingly.

Q. You will notice on our exhibit "D"—is this "D"? A. Yes, sir.

Q. The corner marked No. 3 of the homestead—

A. Yes; that is wrong.

Q. —does not correspond to the survey, because really it is corner No. 2. It is transferred. Now, some of the [170] questions up here will make quite a little bit of difference.

A. The number is transferred, Judge.

Mr. WINN.—I would like to have it shown in the record that corner No. 2 on exhibit "E" is corner No. 3 on exhibit "D."

COURT.—Very well.

Mr. WINN.—I think that is the way it is in the official map.

COURT.—Yes. Anything further, gentlemen, with this witness?

Mr. CHENEY.—That is all.

COURT.—That is all, Mr. Hill. Take an adjournment, gentlemen, until Monday morning at ten o'clock. [171]

(Testimony of Lloyd G. Hill.)

Two o'clock, P. M., March 18, 1912.

(Motion calendar occupied morning of March 18th; hence further trial of case was not reached until two o'clock.)

COURT.—Ready to proceed, gentlemen, in the case of Alexander versus Barron?

Mr. WINN.—Yes.

Mr. CHENEY.—Yes.

COURT.—Call your next witness.

Mr. WINN.—Call Mr. Barron.

[Testimony of James T. Barron, for Plaintiff.]

JAMES T. BARRON plaintiff, being duly called and sworn, testified as follows in his own behalf:

Direct Examination.

Q. (By Mr. WINN.) Your name is James T. Barron, is it, Mr. Barron? A. Yes.

Q. You are the plaintiff in this case?

A. Yes.

Q. What is your business and has been your business for the last six or seven years, Mr. Barron?

A. Salmon packer.

Q. Where have you been engaged in that business? A. Funter Bay.

Q. Funter Bay, in Alaska? A. Yes; in Alaska.

Q. Are you engaged in the canning business out there on your own individual hook, or are you connected with some company or corporation, that is?

A. I am president of the Thlinket Packing Company.

Q. Are you likewise a stockholder in the Thlinket Packing Company? A. Yes. [172]

(Testimony of James T. Barron.)

(Testimony of Lloyd G. Hill.)

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Q. Are you likewise a stockholder in the Thlinket Packing Company? A. Yes. [172]

(Testimony of James T. Barron.)

FOLD O'

187

OLD O'

155

Nautical Mile

11

61



LYNN CANAL ENTRANCE TO COAST POINT SHERMAN

ALASKA

(Polyconic Projection)

Scale 8000

Published at Washington, D.C.
July 1902, revised January 1911.
BY THE COAST AND GEODETIC SURVEY
O. H. Kinnaman, Superintendent

Triangulation between 1890 and 1901
Topography
Hydrography 1902

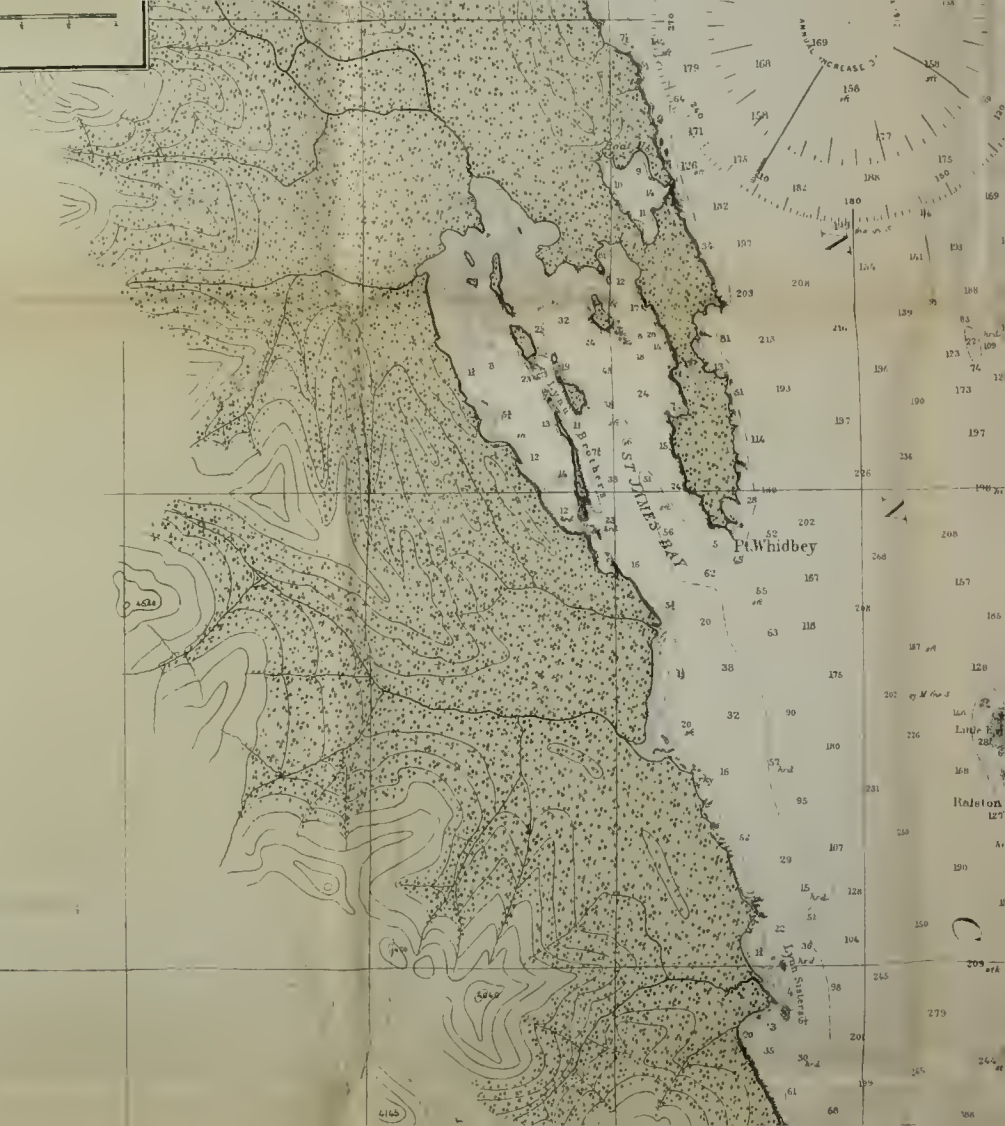
SOUNDINGS

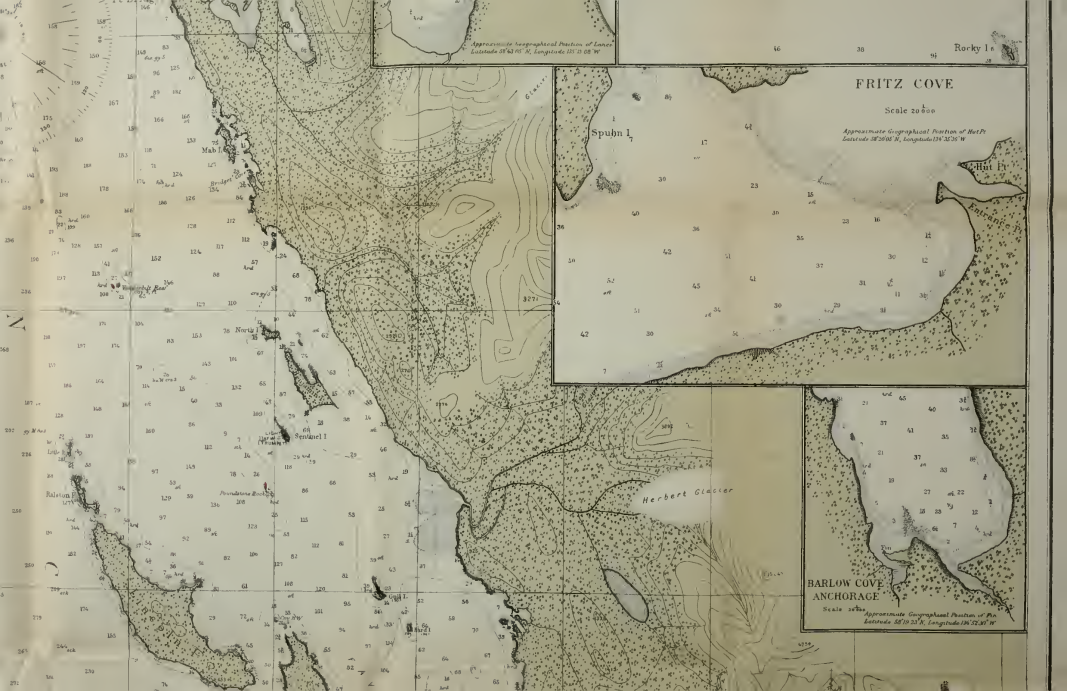
The soundings are in fathoms and show the depths
at the mean of the lower low waters.

Nautical Miles

Yards

Canbery





Approximate Geographical Position of Lanes
Latitude 54°43' 05" N, Longitude 121° 11' 08" W

Rocky I.

FRITZ COVE

Scale 20:1000

Approximate Geographical Position of Fritz
Latitude 58°50' 00" N, Longitude 124° 32' 30" W

Spubn I

Hint I.

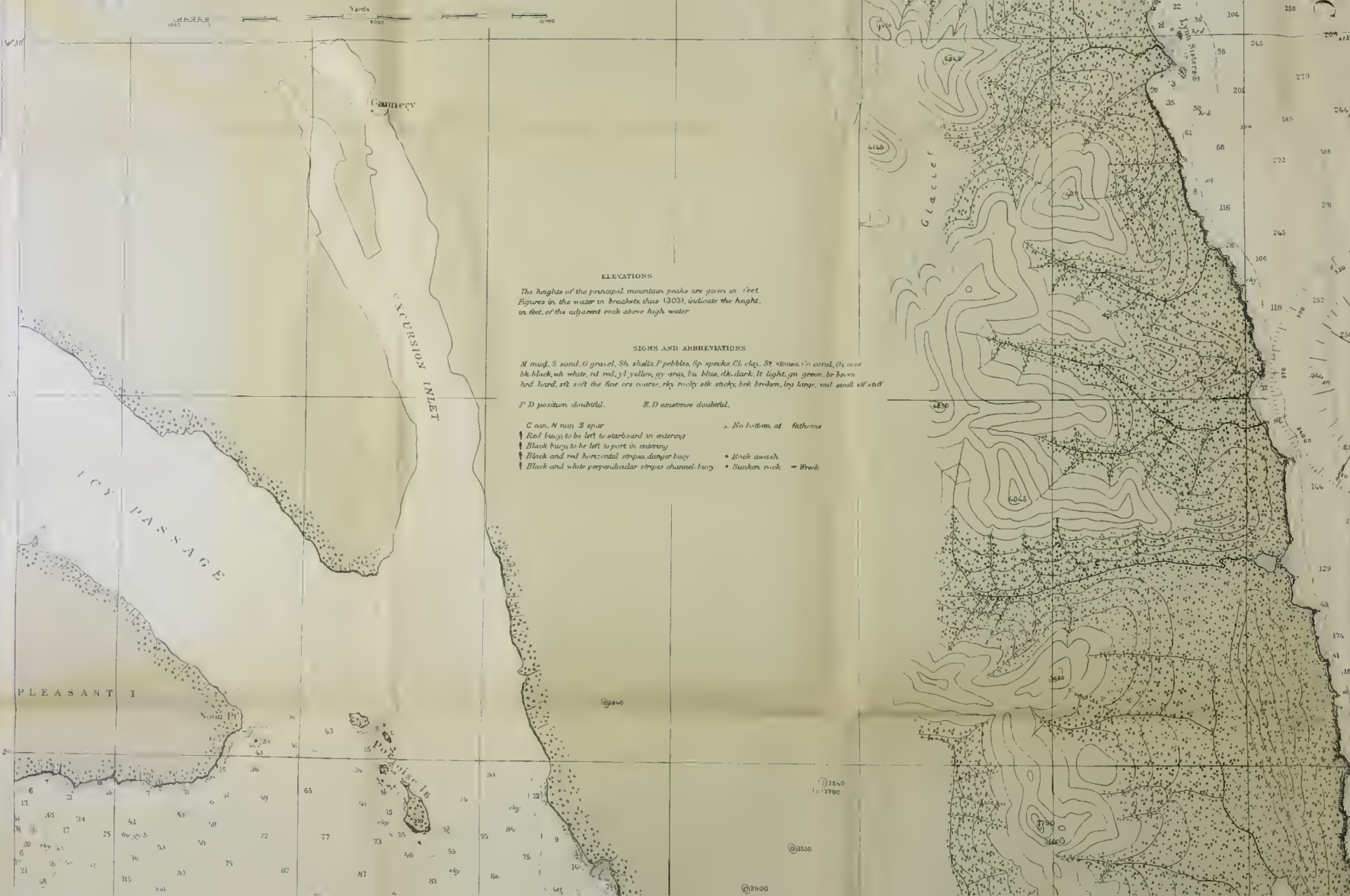
Entrance to Antarctic Pen.

Herbert Glacier

BARLOW COVE ANCHORAGE

Scale 20:1000

Approximate Geographical Position of Barlow
Latitude 58°19' 23" N, Longitude 124° 32' 30" W



ELEVATIONS

The heights of the principal mountain peaks are given in feet. Figures in the water in brackets show (1903) indicate the height, in feet, of the adjacent rock above high water.

SIGNS AND ABBREVIATIONS

M. mud, S. sand, G. gravel, Sh. shells, P. pebbles, Sp. specks, Cl. clay, St. stones, Co. coral, G. ice
 M. black, wh. white, rd. red, y. yellow, gr. gray, bl. blue, dk. dark, lt. light, gn. green, br. brown
 hrd. hard, st. soft, fine. fine, coarse, rky. rocky, stk. sticky, brk. broken, log. large, vnl. small, sif. silt

- P. D. position doubtful.
- E. D. existence doubtful.
- C. oan. N. rise, S. spur
- ∩. No bottom at fathoms
- ∩. Red buoy to be left to starboard on entering
- ∩. Black buoy to be left to port on entering
- ∩. Black and red horizontal stripes danger buoy
- ∩. Black and white perpendicular stripes channel buoy
- ∩. Lock awash
- ∩. Sunken rock
- ∩. Break

3340
3390

3350

2900

3400

Glacier

Excursion Inlet

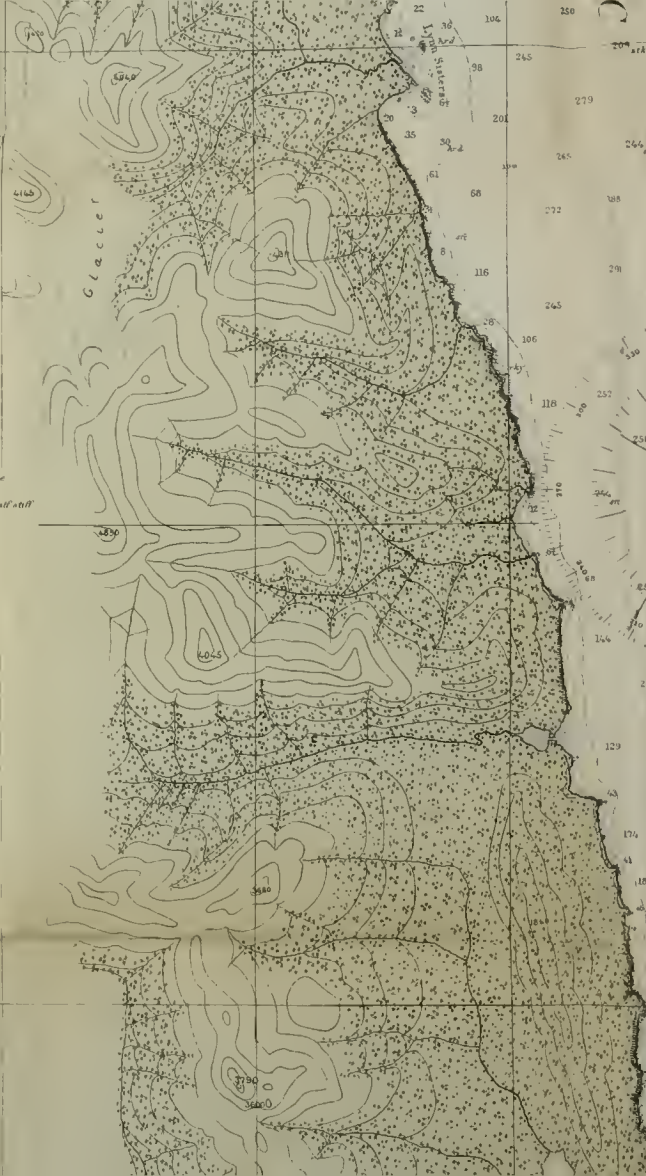
Icy Passage

Gannery

Pleasant I.

North Pt.

6 7 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



**BARLOW COVE
ANCHORAGE**

Scale 1:50,000
Approximate Geographical Position of Sheet
Latitude 58° 20' 27" S Longitude 175° 02' 30" W



*Barron
vs
Alexander for
Plf Ex B for
Edw J P in
Pied in
Ex RR*

Plf Ex B





(Lynn Canal, from Entrance to Point Sherman)



(Testimony of James T. Barron.)

Q. Approximately, what is your interest in that company, Mr. Barron?

A. A little less than three-quarters interest.

Q. And this company has a cannery at Funter Bay, Alaska? A. Yes.

Mr. WINN.—I will now, if it please the Court, offer in evidence in this case the map or the chart which has been testified from and concerning, which is termed “Lynn Canal, entrance to Point Sherman, Alaska.” This is the same chart that several witnesses’ attention was called to and has been identified in this case, and I now offer it in evidence.

COURT.—Any objections, gentlemen?

Mr. JENNINGS.—Incompetent, irrelevant and immaterial.

COURT.—May be received. Objection overruled. (Plaintiff’s Exhibit “B” received in evidence.)

Q. (By Mr. WINN.) On this Plaintiff’s Exhibit “B,” which has just been offered in evidence, there is a place called Funter Bay that is on Admiralty Island, on a peninsula of that island called Mansfield Peninsula, is that where the cannery is located, Mr. Barron? A. Yes.

Q. For you have just inspected the chart?

A. Yes, there is the cannery.

Q. You know where this—you know where this soldier’s additional claim number 804 is, do you?

A. Yes.

Q. About what distance is it from Funter Bay?

A. About five miles from the south end to the bay.

Q. Now in this cannery, Mr. Barron, that you are

(Testimony of James T. Barron.)

running at Funter Bay and which you say you are interested in, how long has your company been running and conducting a cannery there?

A. 1902. [174]

Mr. CHENEY.—If the Court please, object to this on the ground it is immaterial. *With* coincided with Judge Winn in his statement here in regard—at the beginning of the trial—that the intentions of Mr. Barron and his connection with the Thlinket Packing Company, and so forth, was all immaterial in the case. He stated that was his idea of the matter and we coincided with that. I don't see how it can be material whether he owns one share in that company or not. They are not parties in this suit, or whether they are operating somewhere else in the District of Alaska. I can't see the materiality of it.

COURT.—Well, there is—

Mr. CHENEY.—And I object to it because of its immateriality.

COURT.—Well, the only phase of the case that might make it material, that is if shown that the plaintiff was the owner of the upland here it might become material to know just what—to what extent he might desire to use the frontage for access to navigable water and the character of the business that he would be carrying on might have some bearing on that question. I will admit the evidence. I don't appreciate at this time just the full extent of its bearing on the merits of the controversy, but I will hear it.

Mr. WINN.—Yes; it is along that line, your

(Testimony of James T. Barron.)

Honor, and along the line indicated in one of the paragraphs in the complaint.

COURT.—He may answer.

Mr. CHENEY.—I ask for an exception to the overruling of the objection.

Q. (By Mr. WINN.) This cannery that is running there, Mr. Barron, for the purpose of packing salmon has a capacity of about how many cases per day? [175] A. About 3,000 cases.

Q. At the present time? A. At the present time.

Q. And what did it have, say, during the year 1911? A. Had the same, 3,000 cases.

Q. Same capacity? A. Yes.

Q. What means and methods do you use principally in catching fish, salmon, for the purpose of supplying that cannery with fish? A. Fish-traps.

Q. Now, I will ask you, Mr. Barron, what is used in the connection of building of fish-traps, that is, just explain it—I suppose the Court knows, but for the sake of the record?

A. Well, we drive piles from the shore out to where the heart, pot and spiller are, so far as generally can go driving piles, and then hang it with web.

Q. Well, now, just for the sake of this question. At present I just want to know what you use, and not particularly the manner in which it is constructed, that is, I understand you use piling and web and what else in the construction of a trap?

A. Piling and web and timbers.

Q. That is all I wanted for the sake of this company. Now, I will ask you, Mr. Barron, where you

(Testimony of James T. Barron.)

obtain the principal part of your piles for the putting in of your fish-traps each season?

Mr. JENNINGS.—Object to that, if the Court please, on the ground it is incompetent, irrelevant and immaterial.

Mr. WINN.—Following up the same thing, your Honor. I am going to show this place has been used as a harbor for the last years past with anything, his tows, and so forth, going in and out of there. I think it is part of the *res gestae* of the case. [176]

COURT.—He may answer.

Mr. CHENEY.—Exception.

WITNESS.—What was it?

Q. (By Mr. WINN.) I asked where, from what position relative to the land contained in survey number 804, do you get your piles for the purpose of constructing your fish-traps each season?

A. Down Chatham Straits, Peril Straits and Fresh Water Bay. This last year have been cutting at Fresh Water Bay.

Q. Well, now, on this exhibit "B" of plaintiff's, I wish you would indicate to the Court, commencing at Funter Bay and tracing down with your finger as to the general route that your steamers run to get these piles that you speak of to build your fish-traps?

A. Well, we go out of this bay here and then down the Straits—

Q. When you got out of this bay—is it Funter Bay?

A. We will have the cannery there—go out of Fun-

(Testimony of James T. Barron.)

ter Bay and down to this point here and then down the Straits.

Q. Down the Straits? A. Chatham Straits.

Q. Down past the ground contained in survey number 804? A. Yes.

Q. You go down near the ground that is contained in survey 804? A. Yes.

Q. And how much further off from, say, the ground contained in survey 804 does your steamers go to get the piling?

A. Oh, offshore, maybe a half a mile or mile.

Q. No; how far from the ground contained in 804 do you get your piles?

A. Oh, well, the best piling is at Fresh Water Bay; well, about, probably, 25 miles.

Q. To the southward? [177]

A. To the southward; yes.

Q. Yes.

A. To the south; down Chatham Straits.

Q. Approximately, during the year 1911 and for two or three years back of that, how many piles or how much timber as pilings do you use each season for the purpose of putting in and maintaining your traps?

A. I think year before last we had about—well, to go back further, why we didn't have the number of traps, of course, didn't need the number of piling, that we have at the present time.

Q. Well, I say during the year 1911 and, say, 1910. I don't care to go back further than that.

A. 1911, about 1100.

(Testimony of James T. Barron.)

Q. Piles? A. Yes, piles.

Q. What size, length, and so forth, timber average? A. Run about 75 feet to 100 and 110.

Q. And you get about the number you have spoken of in your testimony? A. Yes.

Q. And where these are, if they are not all towed from a point south of this ground contained in survey 804, about what proportion of these piles were brought from a point south of this survey 804 for the years 1910 and 11?

A. They were all with the exception of some on the beach I bought. Probably belonged to me, but I bought them from these beach combers.

Q. Do you have a towboat that is engaged for this business? A. Yes.

Q. What is the name of her? [178]

A. Well, the "Anna Barron."

Q. Who is master of her and who was the last year or so? Captain Mason?

A. Captain Mason; P. H. Mason.

Q. Have you any other boat that sometimes you do towing with? A. Yes, the launch "Buster."

Q. That is the old steamer, used to be the "Kodak"? A. Yes.

Q. And you put gasoline in her? A. Yes.

Q. Now, I will ask you, Mr. Barron, what year it was that you first became acquainted with this ground that is contained in survey 804 and especially the cove or little harbor that is right out immediately in front of it?

A. Oh, some years; but we used to run in there

(Testimony of James T. Barron.)

when Captain Crockett was captain of the boat several years ago.

Q. Captain who?

A. Captain Crockett;—before the Alaska Packers had driven any trap there.

Q. Well, you became acquainted with this cove or little harbor there before even the Alaska Packers' Association built any trap there? A. Yes.

Q. And who was doing your towing then? Who was master of your towing?

A. Captain Crockett of the "Anna Barron."

Q. And how did you come to get acquainted with it at that time?

A. Well, he used to run in there in a north wind for anchorage.

Q. Now, you say that was before the Alaska Packers' Association put a trap in there. What year did the Alaska Packers' Association first put a trap in this cove? [179] A. 1908.

Q. Do you know how many years they fished that?

A. One year, I believe.

Q. Do you know whether or not Mr. Alexander had anything to do with the fishing of that trap of the Alaska Packers' Association?

A. Well, I believe he drove the trap. He had charge of the driving crew—the pile-driver crew.

Q. Did you ever see that trap as it was constructed by the Alaska Packers' Association?

A. Well, possibly—

Mr. JENNINGS.—Object to it, incompetent, irrelevant and immaterial; whole line of questions incom-

(Testimony of James T. Barron.)

petent, irrelevant and immaterial; encumbering the record.

Mr. WINN.—Simply going to show the construction of the trap, your Honor. Alexander testified to it *very length* in the other trial that this place—trap he had was constructed right over the same ground that the Alaska Packers' Association's was.

COURT.—Well, at this time I don't know, Judge, how it can be material—if they should connect their title in any way with the Alaska Packers or their right to it, but I don't understand that the plaintiff is relying on any claim from the Alaska Packers, so isn't necessary too—

Mr. WINN.—Well, yes, sir; we make this question—we bought out the Alaska Packers' Association there; bought out Robertson there; then they go to work and build there—that is the proposition I was getting it to.

Q. Now, Mr. Barron, I will ask you—I believe you did say you saw the trap in there when the Alaska Packers' Association was fishing?

A. Yes. [180]

Q. That was 1908? A. 1908.

Q. Now, in 1908 do you remember anyone fishing that trap or not? A. No.

Q. When did you become acquainted with a man by the name of V. A. Robertson?

A. He worked for me, I think, about 1907. I think it was, or—

Q. Are you sure? A. Yes.

Q. 1907? A. I think it was 7—6 or 7.

(Testimony of James T. Barron.)

Q. Well, I mean the same V. A. Robertson from whom— A. Yes.

Q. —you received the deed to this property?

A. Yes.

Q. He is the son of old Captain Robertson?

A. Old Captain Robertson; yes.

Q. Now, you are the same James T. Barron that is mentioned as the grantee in the deed which I have offered in evidence in this case, which purports to convey the ground contained in survey number 804 from V. A. Robertson to yourself? A. Yes.

Q. I understand that you haven't that deed up here, so just state about the date of it—a year ago. Do you remember the date of the deed, Mr. Barron, without seeing the deed?

A. Well, March the 8th, I believe.

Q. (By the COURT.) What year, 1911?

A. 1911.

Q. (By Mr. WINN.) Now, I will ask you if you have made any settlement with the Alaska Packers' Association with any claim at all that they may have had to this ground in question? [181]

Mr. JENNINGS.—Object—

WITNESS.—I did; yes.

Mr. JENNINGS.—Object, incompetent, irrelevant and immaterial. Not in the complaint that the Alaska Packers has now or ever did have anything to do with this land.

COURT.—I hardly think it is competent under the pleadings. Plaintiff claims—

Mr. WINN.—He claims the upland, your Honor,

(Testimony of James T. Barron.)

but we want to show also for the sake of the record that he made a settlement and adjustment with the Alaska Packers' Association for any claim to the waterfront or shore line which they may have had claim to by reason of having fished and operated the trap there.

COURT.—I don't think that could possibly do the record, or anybody, any good unless you believe this claim is the Alaska Packers' Association. Now, if they had anything to convey over there and is pleaded, I can see how it might be material to prove it.

Mr. WINN.—Yes, sir. Well, it is very questionable, your Honor, in constructing the trap—we bought out Robertson, and as I say I simply propose to show that we bought out from the Alaska Packers' Association any claim that they had on that property.

COURT.—I am perfectly willing to permit any proof *if amend* the pleadings. Might as well come in here and *prove acquired* the interest from any other company. Can't be material under the pleadings and doesn't give the defendant—

Mr. JENNINGS.—We withdraw our objection to it.

Q. (By Mr. WINN.) Now, I will ask you if you had any adjustment or settlement of any claim that the Alaska Packers' Association made to any of the grounds in front of this survey 804? [182]

A. Yes; I leased it in 1910. They gave me a lease. That same time I went down to San Francisco and

(Testimony of James T. Barron.)

they didn't care about giving me a quitclaim deed for it, because they wasn't quite certain they would abandon all their rights of fishing grounds in this district. So, they said they would lease it to me for a nominal sum for a year and then we would make further adjustment. Later why they concluded they were not going to use their grounds.

Q. Then March 8th is the date of the deed from V. A. Robertson to yourself—on that date you purchased the survey 804—the upland from Mr. Robertson? A. Yes, sir.

Q. About how many times, Mr. Barron, have you been up the shore line of Admiralty Island along past this harbor or cove out in front of Survey 804? Now, I don't mean how many times have you been in there, but about how many times have you been up and down the shore?

A. Well, been quite a few times; of course, I don't remember.

Q. Well, are you pretty well acquainted with that— A. You ask as to this?

Q. —with that shore line on Admiralty Island, commencing at Funter Bay and continuing on down south so far as the island goes?

A. Yes; we used to fish down at Hawk Inlet the first year I was at Funter Bay.

Q. What is Hawk Inlet?

A. The inlet right here.

Q. Hawk Inlet is indicated—

A. About eleven miles from Funter Bay, eleven or twelve.

(Testimony of James T. Barron.)

Q. Yes. It is along—well, wait—now, you get through, Mr. Barron. The Hawk Inlet which I refer to—well, let's [183] mark it something, Mr. Barron.

COURT.—It is already marked.

Mr. WINN.—It isn't marked Hawk Inlet.

COURT.—Yes; it is.

Mr. WINN.—Oh, excuse me. It is that shore—well, it is marked Hawk Inlet on this exhibit "B" of plaintiff's.

Q. Now, I will ask you along that shore there, Mr. Barron, as to how it is in regard to harbors?

A. Well, there is no harbor between Hawk Inlet and Funter Bay excepting this cove in here; that is the only protection we have for anchorage from north winds—our Survey Number 804 between Hawk Inlet and Funter Bay.

Q. Now, that would be on the line—if that would be extended from your cannery down to Hawk Inlet it would pass Survey 804? A. Yes.

Q. Now, you know where you get your pilings. I believe you stated a while ago that your steamers came down that shore and then cut off across to the eastward, or isn't it—no, to the westward; to get across to Fresh Water Bay, or what is it?

A. To get to Fresh Water Bay on Chicagoff Island, just come right down the shore and then right down—

Q. Come down the shore by survey 804?

A. Yes; a little that way; strike about that direction, right along this, through about here.

Q. And what distance from Funter Bay is this

(Testimony of James T. Barron.)

place where you have been procuring your piles these last years?

A. 25 miles. Fresh Water Bay is—we are some ways up the channel, about five miles, I think; I don't know exactly, approximately about that much.

Q. Well, now, Mr. Barron, how many times prior to the commencement of this suit by yourself have you been in this little [184] harbor? I asked you a while ago the number of times you have been by it?

A. Well, I haven't been there myself—you mean with a steamer?

Q. No; no; just to put in there and to see the ground or go on by it to see it, and so you understood what was in there, whether a harbor or not?

A. Well, prior to the suit?

Q. Yes, prior to the suit.

A. Oh, several times, of course.

Q. Did you or did you not know of your captain having been in there before?

A. Yes; they have very—

Q. What time in the year 1911, Mr. Barron, did you leave Alaska and go south?

A. In September, the first part of September. I have forgotten the date.

Q. Well, sometime in September? A. Yes.

Q. After the pack was over? A. Yes.

Q. And when did you next come back to Alaska?

A. You mean 1911?

Q. Yes; after you left in September, 1911. This suit was brought in March.

Mr. BURTON.—March, 1911.

(Testimony of James T. Barron.)

Q. (By Mr. WINN.) Well, I mean 1910. This suit was brought in March, 1911. I want to know in the year 1910, in the fall, about what time did you leave Alaska to go south?

A. About September. I think the latter part of September. The middle or the latter part.

Q. In 1910? A. Why, sometime in September.
[185]

Q. Now, what time did you return to Alaska?

A. In March, 1911. No, first of April. I left Seattle for Juneau.

Q. Now, let's get this date approximately. I want to know whether you go back to Alaska before this hearing was had on the preliminary injunction.

A. No; I was not here. I left Seattle on the "Humboldt" April the first.

Q. Then, from September, 1910, up to April, 1911, you were out of the District of Alaska? A. Yes.

Q. Now, you say that you had had a lease from the Alaska Packers' Association prior to that time. What, if anything, did you do upon any part of this ground in 804, or any ground or land in front of it, prior to your going down below in September, 1910?

A. Well, I intended after I got the lease in 1910, in January, I intended to use that for a fishing site, but I found the upland had been taken by Victor Robertson and instead of driving, why I didn't do anything there. I went over to the other traps I had a lease for and drove them.

Q. Well, now, then you got a deed from Robertson in March the 8th? A. 1911.

(Testimony of James T. Barron.)

Q. 1911? A. Yes.

Q. Yes, sir. Prior to this time did you know the—as to whether or not this was a place for anchorage and a harbor also? A. Oh, yes.

Q. Was it prior to that time that Captain Crockett had been in the habit of anchoring in there?

A. Yes. [186]

Q. Then, did you or did *you cause* anything to be done in regard to indicating your claim to this property before you went below in 1910?

A. Well, I gave orders to drive piling there, which I did in the spring of 1910, also to hold the ground and gave notice that I had claimed the right of a fishing site there like it has been the custom.

Q. How many piles did you drive there?

A. Three, I think.

Q. Put any notice on them? A. Yes.

Q. Do you remember what it was?

A. Well, it is my name James T. Barron and trap location.

Q. (By Mr. JENNINGS.) Just a moment, Mr. Barron. Was that notice—you say it was a notice—on there a written notice? A. No; it was—

Q. A written notice?

A. —on a board, I believe.

Q. I say it was written though on a piece of paper?

A. No; a board.

Mr. WINN.—On a board?

Q. (By Mr. JENNINGS.) Have you got that notice—a copy of it?

A. Oh, no; it is—I saw I think the board on

(Testimony of James T. Barron.)

one of the piles there the other day. It was washed out entirely it was.

Q. (By Mr. WINN.) You mean the letters were obliterated? A. The letters; yes.

Q. Now, that was in the spring of 1910. When was it that you first found that Robertson owned the upland immediately in front of this ground that had been used by the Alaska Packers—had been fished?

A. It was represented that there was a claim there. Someone had taken the upland and I ascertained it was Robertson. [187]

Q. Do you remember about what time it was prior to getting your deed that you found out Robertson had a claim there?

A. Oh; it was fully a year.

Q. Now, after you came back here from below and after this suit had been commenced and a hearing had upon the preliminary restraining order, when did you see that ground again after you came back in the spring of 1911 or in April, 1911?

A. Well, I didn't go down there at all during my trip up here. I didn't visit the trap location at all when I came up here in April.

Q. I mean when after your trip up here—I mean 1911, Mr. Barron, when after that time did you see this place?

A. Oh; I went there with the surveyors to put the notices on the location there in August.

Q. You mean Dudley?

A. 1911. Dudley, I and Mr. Wettrick.

Q. Wettrick? A. Yes, Mr. Wettrick.

(Testimony of James T. Barron.)

Q. That is the same Mr. Dudley who testified in this case? A. Yes.

Q. Did you go there with him at the time that he said he posted up the notice? A. Yes.

Q. Well, then, did you see anything in the way of a fish-trap there that Alexander had constructed?

A. Yes; it was in operation.

Q. Did you see Alexander there? A. No.

Q. Who did you see?

A. I saw the boats there cleaning fish out of the trap.

Q. Now, you have seen this exhibit "E" of plaintiff's, which has [188] been testified about by Mr. Hill and, I believe, Mr. Dudley—Mr. Hill directly. How was the fish-trap, when you went there with Dudley, constructed in comparison with the way it is indicated on this exhibit?

A. Well, it was—the piles were run so far as that it was like the map there, I believe.

Q. Well, come up and look at the map and examine it and see.

A. Yes; it—while, of course, we didn't measure the distance while visiting the trap, but the trap was there and the web was fastened up to a shear, probably on above—a little above low-water mark, and the cable over high tide—here is the place on the ground.

Q. I wish you would explain to the Court, Mr. Barron, and take it slowly, just what Alexander had strung from the last pile in the lead, nearest the shore, up to this frame-work he had on the upland above the line of ordinary high tide. Explain to the

(Testimony of James T. Barron.)

Court how that thing was constructed and what use it was there for.

A. Well, the lead was a continuous web on a cable. I presume from the looks of the trap they drove the piles as far as they could possibly drive inshore. Then the web was extended in towards the beach on a cable hung there; dropped into low water into the ground along up here and fastened right here where—I don't know where fastened to, but fastened.

Q. Well, this little frame-work or cross timber it was—it was fastened?

A. A pair of shears, like that (indicating).

Q. Yes. Where was these cross timbers with respect to the line of ordinary high tide, as you remember?

A. Well, of course, the tide was close up there. It was in the water and, of course, I couldn't tell how far the beach ran down in the water. It was about half tide—well, a little [189] over half tide.

Q. Was this structure—this cross-timber to which this cable was attached—how was that with respect to the line of ordinary high tide? Was it above it or below it? A. Above high tide; above high tide.

Q. Well, how far with respect to the line of ordinary high tide, as you judged it was, from the beach there was the web strung on this cable?

A. Well, it was strung over—the web was over—above high-water mark at the shears.

Q. Clear up there? A. On the beach.

Q. I see. Well, now, Mr. Barron, you have had

(Testimony of James T. Barron.)

some experience in the—in the construction of fish-traps, haven't you? A. Yes.

Q. What has been your position with the Thlinket Packing Company outside there, besides president of the company, what active position, if any, have you been in for that company? A. Manager.

Q. How long?

A. Ever since we incorporated.

Q. And that is how many years?

A. Well, the same company incorporated. We changed the name of the company too, but ever since we started the Thlinket Packing Company. Ever since we—

Q. Well, when you came first to Alaska?

A. —ever since the business—

Q. Do you know?

A. Ten years; no, thirteen years.

Q. Thirteen years. Well, how long have you been using fish-traps in connection with this fishing plant?

[190] A. Since 1903.

Q. Have you had any supervision of the building and construction of—and maintaining of the fish-traps of this company during this time?

A. Well, by direction.

Q. Well, you have had the superintendency over them? A. Yes; that is men did the actual work.

Q. You didn't do the actual work? You have also, have you not, seen other fish-traps in Alaska and on Puget Sound?

A. Well, Puget Sound I have never had any experience, but Alaska I have seen quite a few.

(Testimony of James T. Barron.)

Q. Quite a few? Quite a few other than those used by your company? A. Yes.

Q. I will just ask you to explain to the Court what the ordinary way is of constructing a lead of a fish-trap with respect to extending it out to the shore.

Mr. CHENEY.—Object to that.

Q. (By Mr. WINN.) —upon which the same is located?

Mr. CHENEY.—Object to that for the reason it is immaterial. This case is just commenced. Counsel certainly can't introduce evidence now to dispute something that we testified to or tried to prove or did prove in the last trial of this case a year ago. It is a trial *de novo* now, and if this evidence is ever admissible it would be admissible in rebuttal. I don't know how it has any place in the direct case here as to what constitutes a fish-trap.

Mr. WINN.—We say this fish-trap was so constructed, your Honor, in the amended or supplemental pleadings to obstruct us. Now, I am going to show that they constructed it in a way always has been constructed. [191]

Mr. CHENEY.—That evidence has been put in here by Mr. Hill's exhibit and he has shown just the position of the trap as it is in front of the land which Mr. Barron claims. Now, he asks Mr. Barron what an ordinary fish-trap—how it is constructed. That can't add anything or aid the Court in any way. I don't see how it is competent.

COURT.—Seems to me, Judge Winn, just deals with this fish-trap.

(Testimony of James T. Barron.)

Mr. WINN.—All right, your Honor, with that view of it might be rebuttal. Well, I would insist, your Honor, on this phase of the case. It is material. I forgot to mention to your Honor, and you will bear with me if I do so. You see in our complaint we say that Alexander came into Court and got dissolved—this is part of the affirmative matter alleged in our complaint—came—he came in here and got dissolution of the temporary restraining order in this case, and among other things he testified they didn't construct the trap out to the shore line and he didn't intend to construct this out to the shore line. Now, I think, if the Court please, it is part of our record, inasmuch as the record states here there was once a temporary restraining order granted and then dissolved and I have put it in our pleadings, and I think it is very material because the granting of the temporary restraining order and then the dissolution of it might have a great deal to do with the decision of the Court on the merits of the case, and I was going on to show that we have got a different condition of affairs existing in this case and pleaded this. I believe it is good pleading too, I think, that is, your Honor.

COURT.—The question here, Judge Winn, is this: If you desire to impeach the testimony of the defendant that may be competent. [192]

Mr. WINN.—Yes, sir.

COURT.—But he hasn't put himself on as a witness yet and will be time when he comes on as a witness in case you desire to establish whether or not

(Testimony of James T. Barron.)

what he has done there is interfering with your access to navigability. Now, what he may have said on a former occasion isn't material at this time. The Court's granting or refusing a restraining order can't be of any moment here; whether the Court erred or whether the Court was misled by the witness' testimony is immaterial. This case will be tried out absolutely independently of anything that was shown on the former trial, except that it may be that some witness may be impeached for testimony he gave there if it becomes material; but at this time in your case in chief I can't see it makes any difference what Alexander testified to at the former trial.

Mr. WINN.—Well, I offer it—in view of that allegation of the complaint—I offer to substantiate that. If your Honor doesn't permit it to go in, I will reserve my exception, of course, that will save my record. I can't agree with your Honor on that.

COURT.—I am willing to allow the testimony of the plaintiff to take as wide a range as is consistent with any view of its materiality, but I can't see how other traps may have been built or how they ought to be built could aid the Court in determining whether or not this one is blocking your way to navigability.

Mr. WINN.—Yes, sir; I can't agree with your Honor, unless I thought might be an allegation for the reason that the injunction had been granted and dissolved, might be incumbent on me to show a different one, but in that view of it I pass on by that question. [193]

Q. Now, then, Mr. Barron, at the time you saw this

(Testimony of James T. Barron.)

trap constructed in the condition which you have just described, I believe, was it then that Mr. Dudley stated he was out there to put up some notice in the summer of 1911? A. Yes.

Q. Sometime in July or August?

A. In August.

Q. Wasn't it—August, 1911? Now, when after that did you next see the trap? A. This—

Q. Did you see it any time? A. This month.

Q. Oh, this month? A. This month.

Q. You didn't see it any time during the months of July and August, last year?

A. Oh, of course, when I was with Mr. Dudley to put up the notice.

Q. But I mean after that—after the Dudley trip?

A. No; I didn't see it.

Q. Well, you were not here at the time the hearing was had upon the application for a temporary restraining order nor wasn't here at the time that the motion was made for the dissolution of the temporary restraining order? A. No.

Q. Now, you saw this trap after August 11, 1911, at what date? A. I think March 10th or the 11th.

Q. Well, is that the time Hill went out there?

A. Yes.

Q. The time that Hill marked—he made the soundings?

A. Yes; but I was out there two or three days before. Just made a trip out there and looked at the piling. [194]

Q. Well, you was out there two or three days be-

(Testimony of James T. Barron.)

fore Hill made the trip? A. Yes.

Q. In this month? A. Yes.

Q. And then you was out there with Hill when he made the trip? A. Yes.

Q. Now, did you observe at the time the condition of the piling on the ground? A. Yes.

Q. Well, I wish you would look at Plaintiff's Exhibit "E" here and look at the piles, as they are indicated thereon and count them and say whether the pilings—the number of the crosses appears to be—that are driven—as put on this map, corresponds with what you found on the ground.

Mr. CHENEY.—Object to that, if the Court please, for the reason it is an attempt to put on a witness here now who isn't an expert, doesn't claim to be an expert, to testify to a map that they have put in evidence and after the testimony too by an expert, Mr. Hill, a surveyor, who has told how he made that map and how he indicated these black piles there. Now, we haven't put any evidence in; we haven't disputed Mr. Hill's map as being correct. I think that it just encumbers the record here, and I can't see how a witness, who isn't an expert, can add anything to Mr. Hill's. I make the objection because it is immaterial any way and it is encumbering the record with a lot of matter that hasn't been disputed. He is simply asking Mr. Barron now if Mr. Hill hasn't made his map correctly, but indicating what piles were there and the black piles and so forth he claims he located. We haven't put any evidence in and how can he [195] go on with this witness now on that map?

(Testimony of James T. Barron.)

COURT.—Well, if he has any evidence with reference to this map he must offer it as his case in chief. Can't split his case and put some of his evidence in chief and then some in rebuttal. If it is competent at all, now is the time to offer it. It seems to me it is competent, Mr. Cheney. He doesn't know whether you dispute that map, but if he has any evidence, whether by expert or not, to show that is a correct picture as he finds it, I think it is competent testimony.

Mr. CHENEY.—Well, it seems to me it is taking time on a matter that isn't necessary.

COURT.—Well, if you are willing to say to counsel now and you admit at this time that that map is correct and everything shown on there is absolutely in accordance with the physical features of the ground and also all the structures there, why then it isn't necessary.

Mr. CHENEY.—We don't admit that we don't intend to dispute Mr. Hill, and Mr. Barron certainly couldn't testify to the location of the piles.

Mr. WINN.—Oh, yes; he does. He was there and counted them.

COURT.—He may answer.

A. Well, I counted them and I don't think, south of a point as far as could drive, any of the piles that was missing with the exception of one of the fifteen. I think the third pile from the inshore lead was missing there and it is in that map. That is the only error in the map. Of course, I know the shape of a trap as well as its position.

(Testimony of James T. Barron.)

Q. (By Mr. WINN.) Yes, sir.

A. Yes, sir; and I can tell when a trap is constructed and when it is partly constructed; whether a pile is gone that should be there. [196]

Q. Yes; then, as I understand, you think Mr. Hill indicated upon this plat here some piles had been put here were out when he was out there? A. Yes.

Q. Well, now, just indicate to the Court, and come over here to the map and plat, and tell what piles you indicated to Mr. Hill were out you had seen there before.

A. Well, this part of the heart—that pile is missing here, and here there was one pile missing there in the upper spiller, and this here—this pile should be the opposite of it—should be a pile, missing there.

Q. Is that the last end pile?

A. The last end pile. Is this the last end pile?

Q. The last end pile? A. Yes.

Q. Was out? A. But I think one pile in here.

Q. The end pile of the lead—was it the end pile?

A. Oh, yes, I think it was the third, if I am not mistaken.

Q. Have you any—I withdraw that—did you count the number of piles that were in the water, driven there, standing there, when you and Hill were there, Mr. Barron? A. Yes.

Q. Have you counted them on this map or plat?

A. No; I forget the number there, except I think that one pile was out in the lead that wasn't in the trap when we saw it.

Q. Now, now, did you assist Hill in making

(Testimony of James T. Barron.)

any soundings there? A. Yes; along the lead.

Q. Along the lead. Well, indicate what soundings that you helped to make while—helped Hill to make as indicated on this plat. [197]

A. Right along the lead here; I sounded here.

Q. Now, what are the numbers there, do you remember?

A. Well, there is 39, 30, 24, 24, 16, 16, 10, 8.

Q. Now, when you saw that trap, Mr. Barron, in 1911, how was its construction in respect to your testimony that you have just given concerning the conditions that you saw there when you was out this month with Hill? A. It was almost intact.

Q. Almost intact. Now, Mr. Barron, have you—I withdraw that question—have you had under your superintendency as superintendent of the cannery gasoline boats or steamers and had any experience in going in and out of the harbor, and so on, with steamers? A. Yes.

Q. Now, I will ask you, Mr. Barron, the way that this fish-trap was fishing when you was out there in last August as to whether or not that that trap cut off or obstructed your entrance from the deep water of Chatham Straits in to the ground contained in this survey 804? A. Yes.

Mr. JENNINGS.—We object, I think that is a conclusion.

COURT.—Yes; but I think that is probably true, Mr. Jennings, is a conclusion, but the accuracy of the statement of the witness can be gone into on cross-examination.

(Testimony of James T. Barron.)

Q. (By Mr. WINN.) Now, Mr. Barron, I will ask you if you have ever been up and down the shore of Admiralty Island, upon which this ground is situated, at the time when a north or westerly wind was blowing? A. Yes.

Q. I will ask you to explain to the Court from what winds this [198] harbor is sheltered?

A. The north and east.

Q. You heard Mr. Hill's testimony when he was on the witness-stand, didn't you? A. Yes.

Q. You heard about his saying about one day when he went over there, there was a strong wind blowing, and so forth. Now, was you with him that day?

A. Yes.

Q. Now, I will ask you to explain to the Court the condition of the wind and the water and the weather out in Chatham Straits and the condition of it that day in this harbor?

A. Well, it was blowing a gale—what you might call a gale—out in the channel and there it was quiet and calm, with the exception of the wind blowing, of course, over the water, but not like that. Coming down and sweeping down the hillsides would naturally create somewhat of a breeze, but not very much and there were big swells and white caps outside.

Q. How, is the protection of that little harbor in there from the south winds, Mr. Barron?

A. Well, it is pretty well protected from the south winds; direct south winds.

Q. What winds is it not protected from?

(Testimony of James T. Barron.)

A. Southwest and southeast.

Q. Southwest and southeast. What time of the year, Mr. Barron, do you do the most of the towing of your piles for the purpose of building and constructing your traps for any one season?

A. Early spring.

Q. What do you mean by early spring?

A. Well, March. [199]

Q. This month? A. Sometimes April. Yes.

Q. How are the prevailing winds out there on Chatham Straits, right along in the vicinity of this harbor, during the period which you do the most of your towing?

A. Well, we have a great deal of north wind.

Q. I believe you said that this harbor was a protection— A. Yes.

Q. —against north winds? A. Yes.

Q. When did you first become acquainted with Alexander? A. Think I met him in 1908.

Q. What was he doing then?

A. He had charge of the trap for the Alaska Packers' Association.

Q. Did you ever have any conversation with him about his taking possession of this ground out there and putting this trap in? A. No.

Mr. CHENEY.—No. Alexander is it?

Q. (By Mr. WINN.) Yes. You never had any conversation with him? A. No.

Q. Now, Mr. Barron, I will ask you from your experience you have had with these cannery steamers and around on them, suppose that this man Alex-

(Testimony of James T. Barron.)

ander had only constructed his trap with the pots and fillers (spillers), and so forth, as they are indicated upon this exhibit "E" and extended his lead up to where he had it when the temporary restraining order in this case was dissolved, being the little cluster of piles just opposite the words on this plat "Barron's piles," now cut off—I will ask you as to whether or not a structure of that kind would obstruct the entrance of steamers the size of the "Anna Barron," "Georgia" or other steamers that may go [200] in there, from the entrance to this harbor and the upland?

Mr. JENNINGS.—Just, wait a minute.

Mr. WINN.—He withdraws his objection.

WITNESS.—Why, I thought—

Mr. JENNINGS.—He just asked this witness—

WITNESS.—I have forgot the question.

Q. (By Mr. WINN.) Well, I will put it in this shape, Mr. Barron. Suppose that Alexander's trap— A. Oh, yes; I remember now.

Q. —was in the condition that he testified it was at the time the temporary restraining order in this case was dissolved?

A. It would be quite dangerous to go through there at times, especially when the tide or the winds were blowing. It would be almost impossible and to—to do it with safety if there was a wind blowing there.

Q. Well, you have seen the "Anna Barron" with a tow of piles? A. Yes.

Q. Well, even if they constructed it like he had it

(Testimony of James T. Barron.)

there, would it have been possible for her to go in and anchor with this structure fastened as it was when this other case was tried?

A. Impossible without knocking some structure down with the swinging of the raft.

Q. I will ask you, Mr. Barron, if you have had experience enough to observe when going in in the night-time to this harbor, or any harbor for that, as to whether or not the shade from the upper hills, and so forth, has any effect upon your ability to see a structure like a trap? A. Yes.

Mr. CHENEY.—Object to that for the reason it isn't confined to this particular spot.

Mr. WINN.—I will confine it. [201]

COURT.—He may answer.

Q. (By Mr. WINN.) Now, you know the contour of the ground above this little harbor down there, do you not? A. Yes.

Q. Well, now, Mr. Barron, what would you say—suppose a steamer was seeking shelter in there out of a storm or even was just going in there at night to anchor, in the night-time, ordinary night, not a moonlight night, what would you say about the ability of the officers of the steamer to see this trap before they got right on top of it?

A. Well, it would be very hard. The shadow of the hill—the mountains throw a shadow over the water and it would be almost impossible to see a trap until you got on to it some particular nights; on a moonlight night or where the reflection was against the mountain from the water, why you can

(Testimony of James T. Barron.)

see plainly but when the shadow is thrown over the water it looks like a pocket.

Q. What would you say about the utility of this harbor and about the accessibility of reaching your upland there if this trap is permitted to remain in there as it was constructed by Alexander or finished by him?

A. Well, it would be dangerous. I couldn't go in with the "Anna Barron" and anchor there. I might do that if there was no tides and no winds and daylight.

Q. Well, you would be—

A. Everything calm, but I wouldn't dare to go in there with her with the tides or the wind blowing.

Q. Well, how would it be to go in there with a tow of logs any time?

A. Couldn't possibly get in there without striking the trap with the swing of the raft. [202]

Q. Now, Mr. Barron, there has been some question about the scrip in this case, while I don't consider it material, I will ask you a question if the Court thinks it material and counsel don't object to it. Did you purchase the scrip that has been testified about in this case to cover that ground?

A. Yes.

Q. I will ask you, Mr. Barron, if anything should turn out that this scrip isn't good or the amount is not in Washington as to whether or not you expect to go ahead and patent this upland? A. Yes.

Mr. CHENEY.—I object to that, if the Court please.

(Testimony of James T. Barron.)

Mr. WINN.—I don't know as it is material. Under some of these decisions, your Honor, it is material.

COURT.—I don't appreciate its materiality, but he may answer.

Mr. WINN.—I don't know either, your Honor. He has answered. He said, "Yes, sir."

Q. Just a minute. Oh, I may ask you, Mr. Barron,—I will ask you, Mr. Barron, if you were out to this ground at the day Mr. Hill made his soundings and remained there all the time Hill was there?

A. Yes.

Q. But you didn't help him make any soundings except the soundings along the lead line as you testified concerning? A. No.

Q. Well, now, did you stay there until the low tide, March tide, until the tide was out?

A. Not quite out. I think it was an hour before low water before we got through.

Q. Did you go out where he made the sounding at the last pile [203] nearest the shore?

A. Yes.

Q. Nearest the shore? A. Yes.

Q. You saw that sounding made? A. Yes.

Q. Well, now, did you—you don't remember the depth at that point? A. Eight feet, I believe.

Q. Yes. Did you take any measurements or observe approximately the distance it was from that last pile in the lead to where tide land was?

A. Well, it looked to be about 150 feet, but we

(Testimony of James T. Barron.)

measured it out—it was 140.

Q. Yes. A. Some bedrock out there—a point.

Q. I did ask you if there was any chance, Mr. Barron, even though there was no web ever been strung between that last pile and the upland, for any size of gasoline boats, or any other boats, to navigate between the upland and that pile at ordinary low tide?

A. No; a small gasoline boat could go there. Three big boulders there, probably three or four feet along, high; they entirely close up along in between, entirely; along the shore line might get a depth of, say, four or five feet and get on top of a boulder and you would have three or four or five feet less of water.

Q. I understand. When you was out there at ordinary low tide that was entirely closed up from that pile clear on up to the ordinary line of high tide?

A. Yes.

Q. No chance of getting through there unless you run through [204] his trap? A. No.

Q. There has been some little testimony, Mr. Barron, here about the beach and shore line, I believe, along the waterfront of this survey of yours. I wish you would, just as you remember it, would minutely—not minutely but generally describe to the Court how this shore line along the survey is with respect— A. Well, it is marked bluff there.

Q. Yes.

A. There is a space here, I don't know how many feet, maybe 50 to 75 or 100 feet here; that is just a little beach here; this is very high between; doesn't

(Testimony of James T. Barron.)

run very level right along through here.

Q. Give it entirely along there, only commenced on the eastward? A. On the westward?

Q. On the westward side.

A. Yes; northwest corner, here is a pretty fair beach; of course, the beach between high and low water is rocky and the wash of the tide has taken out sand and thrown it on top of the high-water mark along there, and here is a place here, and it is more level down on this end than up here.

Q. Where is the natural landing place, Mr. Barron, and the place for mooring and—

A. Well, I should think right here, about opposite the cabin in here.

Q. Opposite the cabin on the westerly—

A. Where is the cabin—about here—and—

Q. On or near the westerly side line of the survey?

A. Yes; about one-third nearer to the northwest corner of the plat.

Q. Yes. [205]

A. Of course; all this could be—I suppose from here to there about 300 feet.

Q. There is about three or four hundred feet. Near the westerly end line?

A. Northwest corner.

Q. Yes; of your claim and that would be a place for landing, and so forth? A. Yes.

Q. Explain to the Court why that is so.

A. Well, because between this and the lead line it is more of a level beach here, and besides I wish to put buildings or anything on there could do it easier

(Testimony of James T. Barron.)

for them to build, and also running off out here you would have a feasible way and then you have got your—what else do you wish?

Q. That is, just explain to the Court why you think that is the best place either for landing or wharfing or anything of that kind or reaching your upland. Now, I will ask you, Mr. Barron, should a wharf be built out from any part of the water front to this piece of property of yours as to whether or not this trap, as constructed by Alexander, would be an obstruction in the way of getting to that wharf to effect a landing, to reach your upland?

A. It would.

Q. Well, explain to the Court how that would be.

Mr. JENNINGS.—Just a moment. Interpose an objection to that question as the witness is not shown to be qualified to express an opinion; in the second place, it is only an opinion; in the third place, it is purely a conclusion.

Mr. WINN.—Well, I will qualify the witness, your Honor.

Q. Have you had anything to do with building of wharfs or landing places in your fish business?

A. Well, by direction. [206]

Q. That is you directed the work to be done?

A. Yes.

Q. You oversee it? A. Yes.

Q. You have had some experience in that, Mr. Barron? A. Yes.

Q. Well, I will ask you in the event that you wanted to facilitate your landing at this upland of

(Testimony of James T. Barron.)

yours and wanted to wharf out and put a structure in there, or float, or anything of that kind, as to whether or not this—that this trap, as constructed by Alexander, would prevent you from so doing?

A. Yes.

Q. Well, will you explain to the Court, Mr. Barron?

A. Because we would have no room to land. When a boat goes into a wharf or float they have to maneuver to turn around and to get around have to have steerage-way; so, on a compass in there wouldn't have steerage-way if it should blow or the tide was high, send her on the beach. Hard any way to control a boat. She must have steerage-way, so to answer her steering gear; otherwise, she would be helpless.

Q. What length is the "Anna Barron"?

A. About ninety feet.

Q. About ninety feet. You have never been master of her yourself? A. No.

Q. What is the size—the length of the "Kodat," the other boat in use for towing?

A. I think she is fifty-four feet.

Q. Do you remember how much water the "Anna Barron" draws?

A. About between eight and a half and nine feet.

Q. Is that when she is light or loaded?

A. Well, I suppose when she has got her fuel in her and water, and so forth, I suppose she will go eight and a half or nine [207] feet anyhow.

Q. Do you remember the draft of the "Kodat"?

(Testimony of James T. Barron.)

A. Well, I think she will draw something like six feet.

Q. In giving your testimony, Mr. Barron, you have gone over these maps and plats and measurements with Lloyd Hill? A. Yes.

Q. Do you know the distances out there?

A. Yes; by referring to the map.

Q. You know the approximate distance between the heart and filler (spiller) of Alexander's trap and the reef and the—and the peninsula? A. Yes.

Q. And you know also the approximate distance between this lead line of the trap and the—and the side lines or prolongation of the side lines of the survey? A. Yes.

Q. You heard Hill's testimony and have gone over that with him? A. Yes.

Q. Side lines, I say. To the end lines. Put that statement "end lines, prolongation to the end lines of the survey," Mr. Robertson. Side lines would be different entirely. I think you can cross-examine.

Cross-examination.

Q. (By Mr. CHENEY.) Mr. Barron, you talked about the condition of that place you call a harbor there in the night-time. When were you in there, run in there in the night-time, in the dark?

A. Well, it was a matter of knowing the conditions beyond there. I was never in the night-time there myself.

Q. You are just giving that as your opinion?
[208]

A. Knowing it, Mr. Cheney, in those bays; observa-

(Testimony of James T. Barron.)

tion of the topography of the whole country at different places.

Q. Different places, yes. Now, you spoke about getting your piles for your fish-traps for the Thlinket Packing Company at Funter Bay. You have bought piles from this man that has a homestead over on Shelter Island, haven't you, way around this side of Point Retreat? A. No.

Q. Never buy any piles of him at all?

A. Oh, you mean there. Yes; I bought them in 1903 and 4, I think it was, but not in late years. I think it was—I think 1904, 3 or 4 was the last time I ever bought any piles on Sullivan Island, near Sullivan Island.

Q. Yes; and here on Shelter Island; Portland Island? A. No; I don't think so.

Q. Where this Finland laborer has lived, who is over there—he has sold you piles, hasn't he?

A. No; not that I know of.

Q. Now, you say that Captain Crockett said that he used to run into this little place sometimes, didn't you? A. Yes.

Q. You know he used to run in. You haven't been there but only just the times you have mentioned to Judge Winn, have you? You wasn't down there in 1911 only just once, that was in August, I believe you said?

A. Yes, I think—let me see—I don't remember now. I think that is the only time I was there.

Q. Yes. You weren't there—

A. I don't remember of being there any other time.

(Testimony of James T. Barron.)

Q. You weren't there in 1909 when there was no trap there at all, were you?

A. Oh, passed down there. [209]

Q. I mean you didn't go in there to examine it and look at it? A. No.

Q. To see whether it was a harbor or not?

A. No.

Q. Now, this Fresh Water Bay you are talking about is on Chicagoff Island? A. Yes.

Q. Clear across Chatham Straits from Admiralty Island? A. Yes.

Q. Well, do you mean that it was—that you gave orders for men bringing piles from Fresh Water Bay, way over on Chicagoff Island, to always stop in at this little harbor with the piles on their way home?

A. No.

Q. No. Hawk Inlet is a pretty good harbor, isn't it? A. Very fair; yes.

Q. Yes; that is a good harbor and did you give orders for them to stop in there with the piles on the way home? A. If in a storm.

Q. Well, any man coming in a storm would go in the best harbor he could find? A. Yes.

Q. Any port he could find. You don't mean to tell this Court you have been in the habit of using this place and have been for several years as a particular harbor for your own boats, do you?

A. No; but we have used it occasionally, when occasion required.

Q. Yes; so did all the fishermen in the country?

A. I suppose so.

(Testimony of James T. Barron.)

Q. The same as they would at any other place it happened to be coming along there and happened to be a bad wind from the north, might come along that lee shore? [210] A. Certainly.

Q. If a southeastern blowing they wouldn't go in there?

A. With us wouldn't need to because blows right into our bay.

Q. Well, I say if a southeaster was blowing a man wouldn't go in there for protection?

A. No; but we wouldn't need to.

Q. If a wind blowing across Chatham Straits, a west wind?

A. No; would have to; go right into our bay, cross over from Icy Straits; wouldn't be necessary to go in.

Q. Or if a man was coming up Chatham Straits with a tow of logs and didn't find a harbor he would be more apt to go into Hawk Inlet, just right close up there, than this little point, wouldn't he?

A. Well, I don't know. The north wind dies out down there at Point Augustine and it hasn't the velocity it has up along that place, and you go along that shore in an ordinary north wind and get as far as this harbor and stop there. It is a well-known fact that a north wind has no effect south of Point Augustine.

Q. Now, you told the Court this was protected from the north wind and the east wind, I understand? A. Yes.

Q. The east wind comes on from the direction of the east line of your homestead claim? A. Yes.

(Testimony of James T. Barron.)

Q. That is—if so, if it is protected from the east wind, the protection is just as good, if not better, on the east end of your claim as it is on the west end of this claim at this little reef? A. Say it again.

Q. Why, an east wind blows there you say this harbor is protected [211] from an east wind to a certain extent, I say the protection would be better over on the east end of the claim than it would be over on the west end if an east wind blows?

A. I don't think so.

Q. Why not?

A. The east wind—this is it—well, the mountain range gives protection to it from the south wind and the east, and it is protected by the east—being east of the—

Q. Well, yes, then I say— A. —shore.

Q. I say if it is protected from the east wind and the wind is blowing from the east that protection must be better over to the east end of your claim than it is over to the west end, over next to the reef?

A. Well, I don't think so; I don't think so.

Q. Well, if—if it is protected from a north wind, we will say a straight north wind blowing like everything, like they do over there, the protection is better right next to the beach than further out?

A. Further out; why, certainly, than further out.

Q. Yes, certainly. Well, if protected from an east wind, isn't the protection better the farther you go to the east than over to the west end?

A. Well, the east wind have—the mountains shelter from an east wind.

(Testimony of James T. Barron.)

Q. And if you go further off, over east, the protection is better?

A. Well, between those two points, I don't know; might be.

Q. Would you say it would be just as good?

Q. (By Mr. JENNINGS.) Well, between which two points, Mr. Barron?

A. I don't exactly know where—what point counsel were asking.

Q. Here you are.

A. Now, this runs south. Now, this east. The line would be east you say? [212]

Q. You say between two certain points it would be just the same. What two points do you mean?

A. Well, I suppose the two points of the survey. I suppose no difference.

Q. Just about the same?

A. I should think so—I don't think very much difference between an east wind—between these two points. So little, I don't *think make* any difference.

Mr. WINN.—I don't care if both examine.

Mr. JENNINGS.—Just want to know what he is talking about there.

Q. You mean from that end of the survey to this end of the survey would be just about the same?

A. I don't think would be very much difference.

Q. Those two points, that is, what you mean—from the east end to the west end of the survey?

A. Because the east wind has very little effect on it anyhow.

Q. (By Mr. CHENEY.) I will ask you this, Mr.

(Testimony of James T. Barron.)

Barron. I don't know as you have been there with boats, and so on, or not, but I will ask you any way. That this survey, just as it is there, isn't it a fact that the water is calmer and stiller and better over any of this section around in here in front of this survey with an east wind blowing than it is over in here? Isn't this water, on account of the extreme heavy and swift tides that come across Chatham Straits from Icy Straits, or come around this point and swerve in here, isn't this more liable to be rougher than over here?

A. Well, I couldn't judge; couldn't say that; but I couldn't say that would be very much difference in the short distance.

Q. You haven't noticed that yourself?

A. No, never noticed it.

Q. You haven't landed in here with a small boat in front of [213] this survey and taken occasion to notice?

A. Once in a while I have a small boat around there, but I never had particularly to experience—

Q. Experience. You do know though, as a matter of fact, there is a heavy tide comes across Chatham Straits and runs around this point?

A. Yes.

Q. And there is a low point in front, expires there, and isn't it a fact that little of that incoming swell gets around this little bight here on this point?

A. I don't know; never noticed that.

Q. You haven't been there to notice. Now, Mr. Barron, have you ever—have you ever looked at a

(Testimony of James T. Barron.)

large map of that section of the country and noticed this little spot there on the map, where your survey is, to see whether it looks like a harbor or not? Have you ever noticed it on a large map? That map there is cut off. Funter Bay and Hawk Inlet are a little way— A. Yes.

Q. Have you ever noticed it on a large map that shows the whole thing?

A. Well, there is a map, probably there that I have—have—it is a smaller scale than this. Shows the whole of Admiralty Island, I think, and I have noticed it casually, but I haven't made no particular study.

Q. Well, as a matter of fact, Mr. Barron, during the whole—the whole summer season the prevailing winds are not from the north, are they, during the summer season?

A. Well, there has been last summer, quite a lot of north winds.

Q. Well, but what is the prevailing winds?

A. Southeast winds generally.

Q. Southeast winds. And this isn't a harbor for the southeast [214] wind?

A. No; not a very good harbor for a southeast wind, but from the evidence you see there in the trap, so slightly built, the structure is almost—indicates—shows not very rough weather in there or that trap wouldn't have stood it. It is a lighter constructed trap than any of ours.

Q. You say it would be dangerous to go into that—what you call the sandy beach there—with the “Anna

(Testimony of James T. Barron.)

Barron'' when you have 361 feet of navigable water?

A. Yes; dangerous.

Q. Between the point and the trap?

A. Dangerous with the tide.

Q. What?

A. Yes; dangerous—the tide sweeps in there.

Q. Against the tide. Suppose there is a flood tide around that point? A. Yes.

Q. We all agree upon that.

A. No; stops her steerage way with the tide in there—just loses her control, and travels three or four hundred feet before you can back there very well.

Q. As a matter of fact, down in Seattle they have a lot of wharves where the boats never lay alongside, just come right in with their tows and back out?

A. Oh, yes.

Q. Lots of them that way? A. Yes.

Q. Wouldn't be any difficulty at all in the "Anna Barron" going in there? Wouldn't go on the beach anyhow?

A. Yes; if have a good strong wharf to tie to. If a current comes on the outside of the dock, get a line ashore and check the boat. [215]

Q. Now, if the "Anna Barron" did go on there and dock in close up to this sandy beach, wouldn't draw any more or less than if not tied to a dock?

A. I suppose not.

Q. You suppose not. But she would come in there if no wharf there or no trap there or anything else—wouldn't come on very far past that point?

(Testimony of James T. Barron.)

A. Well, have to go in there to get into the harbor.

Mr. WINN.—Now, what point? If you don't understand the question, don't answer. I don't know what counsel is talking about.

Q. (By Mr. CHENEY.) Only one point.

A. You mean in from the reef?

Q. Yes, where the reef is there.

A. Between the reef and the pot and spiller?

Q. Yes. I say if she draws nine feet of water she wouldn't come in there any farther than about where you have marked, say, where Mr. Hill has marked here "about twelve feet" or something like that—up in here?

A. She wouldn't come any farther.

Q. She wouldn't come any farther; no.

A. She couldn't go any farther.

Q. Well, if you have—well we will say—330 feet of water that is over $13\frac{1}{2}$ feet deep at any tide between there and this reef, you say it wouldn't be safe for the "Anna Barron" to come in here and anchor?

Mr. WINN.—Now, if the Court please, I object to this as incompetent, irrelevant and immaterial, We are simply protecting our waterfront; not somebody else's. There is only 150 feet between the prolongation of our property and this line—and this outer station. He can't, if your [216] Honor please, and your Honor can't in rendering the decision in this case, say we will go up across out here and use this land out here as a harbor somewhere else. Simply protecting our rights to our own waterfront. Of course, as to his owning it—it might be an ex-

(Testimony of James T. Barron.)

pert question—I don't know, but the distance between these two points is 150 feet. Now, he said 300 feet. I don't know what that ground is. It isn't ours. We are talking about simply going on our own property and I don't think it in line, your Honor, with our own proposition.

COURT.—Well, I have ruled on that matter already in another case, but anyhow it is competent here. I have ruled in the Katalla case, in which you are co-counsel, if you have any access to use you may take it whether it is—whether you take it at an oblique angle from your property or at right angles so long as you can get out. I have held in that case there, in the case of the Katalla Company against Low, that was what was considered access by our appellate court and I am still of the opinion that is correct.

Mr. WINN.—But going in front of other people's land, your Honor.

COURT.—No question—isn't going in front of other people's land. The question is for you to show that they prevent you from getting in. Now, if they show you can get in easily and with reasonable access, it doesn't make any difference where you come in.

Mr. WINN.—I didn't know your Honor held that way. He didn't intimate from the shore there. I thought at least that your Honor's decision had confined it specifically to the waters out in front of the waterfront to our land. Now, of course, somebody else could get this whole upland and then absolutely come in and shut us off. [217]

(Testimony of James T. Barron.)

COURT.—That question did arise. The New York courts have said when that arises they will determine it, but you are asking now for relief from a structure which you say he is maintaining and obstructing your access to deep water. Now, in my view of the matter in this case—I am considering now the question of access—they have a right to go on there so long as they give you and you have a reasonable access to your property. I am satisfied that is the law. I so held in the Katalla case and I don't think any little thing in this case could change my mind, because it is based on the ruling of the appellate court in the Decker case.

Mr. WINN.—That is whether go over other people's waterfront or your own waterfront, or not?

COURT.—Yes.

Mr. WINN.—Your Honor will allow me an exception.

COURT.—Yes. I don't mean to say in this case may not some other issues arise. If that is the objection you have now to the admission of this evidence, the objection may be overruled.

Mr. WINN.—Of course, the contention we make: We have got to have free access to our property from the water in front of our own property because we don't know what our neighbors are going to do; can't go in front of our neighbors, for he may do something to prevent us doing that. So, I think in this case we will stand upon the theory that they are obstructing our free access over and in front of our property, because we don't know what there is above

(Testimony of James T. Barron.)

or below us. If any waterfront property, either below or above us, could entirely shut us out from getting into our upland in that manner. That is the theory we take that we could wharf out over any water in front of our land and not trespass upon [218] somebody else's rights in order to reach it there, and they couldn't force us to trespass.

Mr. JENNINGS.—In the first place, haven't shown anybody owned any.

COURT.—If the evidence should show you were obstructed from taking any other course by anybody else, then I would be *included* to agree with you. Unless that is shown, I don't think that is the law. Objection overruled. In any event the evidence may be admitted.

Mr. WINN.—Exception.

Q. (By Mr. CHENEY.) I will ask you the question again. Now, Mr. Barron, I want to know if you intend to swear that it would be unsafe for the "Anna Barron," which you say draws 8½ or 9 feet of water, to come into the harbor here for a place for anchorage between the trap—between this point and the reef?

Mr. WINN.—Now, what point?

Mr. CHENEY.—Well, this point.

Mr. WINN.—Well, it is marked there.

Mr. CHENEY.—Well, it is marked "bare rock" and the reef is marked "reef" and so forth.

Mr. JENNINGS.—Alexander's trap is marked "Alexander's trap."

Q. (By Mr. CHENEY.) Here is 342 feet of open,

(Testimony of James T. Barron.)

navigable water that in the shallowest place on this map is $13\frac{1}{2}$ feet deep at low tide and being very much deeper over here, say 40, 39 or 40 feet of water, —that it would be unsafe for the “Anna Barron” to come in? A. It would be.

Mr. WINN.—Now, wait before you answer this, Mr. Barron. Now, if your Honor please, we object to this question for the reason it is incompetent, irrelevant and immaterial for any purpose of this case whatever; and then if it is understood [219] in this case, so as to prevent further objection, that I object to any and all questions on cross-examination of this witness pertaining to the ability to enter and reach the upland of survey 804, unless that examination is confined to our traveling within the limits of our rights, that is to say, that we are seeking to enter and reach by use of that water—we are seeking to enter the harbor and reach the upland by reason of coming in and over the waters immediately in front of survey No. 804 and that would mean the waters and frontage that is embraced between the prolongation of the end lines of this survey, as is indicated on this exhibit “E” that—that is the only right of way that we have under the law out to deep water, that is over the water that is immediately in front of our own property; that we couldn’t be held accountable for the rights of others that may hold on land adjoining ours; and for that purpose, I say the evidence is incompetent, irrelevant and immaterial for any purpose in this case and so without objecting to it each time, so far as this witness is concerned, we

(Testimony of James T. Barron.)

would ask, if your Honor please, that it be considered. That is all right, isn't it, without making a specific objection.

Mr. CHENEY.—Oh, yes, I guess so.

Mr. WINN.—I mean don't have to state the specific question.

COURT.—Well, it will—

Mr. WINN.—You may go on the other way.

COURT.—I think it is well the objection should go to all that character of testimony. It will save the record and expedite the case, I believe. The objection may be overruled with that understanding.

WITNESS.—Just repeat that once more.

Q. (By Mr. CHENEY.) I will have to ask the Reporter to read it [220] to you because I have stated it just the way I want it. He will read it to you.

Q. (Read by the Reporter.) Here is 342 feet of open, navigable water that in the shallowest place on this map is 13½ feet deep at low tide and being very much deeper over here, say 40, 39 or 40 feet of water,—that it would be unsafe for the “Anna Barron” to come in?

Q. (By the COURT.) Do you understand the question?

A. It would be unsafe if there was a fierce tide running like there is around that point and the wind blowing—it would be very unsafe, and it would be impossible to go in there with a tow of logs without the total destruction of the obstruction, the trap. To anchor would have to use about five or six times the

(Testimony of James T. Barron.)

length of the boat just to swing there or hit the point, and then of course have to do it with a nicety and be able to have the conditions with you favorable, so be perfectly safe; otherwise it would be unsafe.

Q. (By Mr. CHENEY.) Now, Mr. Barron, you say if a strong wind was blowing. What kind of a wind? A. I said southeast wind.

Q. Southeast wind? Well, if a southeast wind was blowing you wouldn't go in there at all for anchorage whether any trap there or not?

A. Well—

Q. Answer the question. Would you go in there with a strong southeast wind blowing, when any kind of a wind was blowing, for anchorage at this place?

A. Not unless had that for a wharf and no obstruction.

Q. If you had a wharf there?

A. Could go if a wharf there and tie to the wharf.

Q. You haven't got a wharf there, have you? There isn't any wharf there? [221]

Q. No; but then I say if there was a wharf there you wouldn't go in a tow of logs because the wharf would be just as bad as the trap?

A. No; the wharf would be stronger than the trap.

Q. Yes, but the trap would be just as apt to hit—
Mr. WINN.—Let him answer.

COURT.—Let him answer.

Q. (By Mr. CHENEY.) I say if you did go in with a tow of logs just as apt to swing around the wharf as a trap if both in the same place?

(Testimony of James T. Barron.)

A. Oh, no; seen tows the tide would swing them around.

Q. What is it?

A. Oh, no; seen tows the tide would swing them around.

Q. Yes; yes, but I asked you this question: When there is a strong gale or southeast wind blowing you wouldn't go in there for anchorage with any kind of a boat at any time?

A. I don't know; if I should build a wharf there for purposes, could make that a station, I would want to go in there with any kind of a wind.

Q. You don't answer the question. There is no wharf there now?

A. I can't go there now on account of the trap.

Q. Suppose, Mr. Barron, there was no fish-trap there, nor any wharf either, then I ask you would you go in there—

A. Well, I have no business.

Q. —with the "Anna Barron" or any other boat with a strong gale of wind blowing there?

A. I have no business there at all if nothing there.

Q. That isn't answering the question. Would you go to anchor there at all, Mr. Barron, with a southeast wind blowing?

A. If I had no business, of course, I wouldn't go in there.

Q. Do you consider it a safe anchorage to go in there with a [222] southeast wind blowing?

A. No; but if I had a wharf there be all right.

Q. If you had a wharf? But I say if there isn't any wharf, do you consider that a safe harbor to go

(Testimony of James T. Barron.)

into with a wind blowing from the southeast?

A. No; not without a wharf; no.

Q. And with a southeaster blowing you wouldn't consider it a safe anchorage?

A. With a wharf; not without a wharf, no.

Q. I suppose the harbor would be a whole lot better with a wharf there? A. No.

Q. Less wind? A. Oh, nothing, no.

Q. Something to tie to? A. Yes.

Q. If you had a wharf at just where Mr. Alexander's trap is on this map and you were coming in with a tow of logs and wanted to rest on your way home with a tow of logs, would you go in there?

A. I wouldn't have to go quite so far as your heart and spiller is.

Q. You wouldn't have to go that far?

A. No. You couldn't maneuver in that, between the trap and the cove with a strong tide no matter whether any wind at all.

Q. No?

A. You couldn't maneuver in there and get around. You would be obliged to get on top of the trap or on the beach.

Q. Pretty strong current comes right around this beach? A. Yes.

Q. You could get in there any time?

A. If the trap was out of the way. [223]

Q. Over to this east end line?

A. No, the trap is there. The current sweeps you around.

Q. I am not asking about this, coming in the way

(Testimony of James T. Barron.)

the visible line somebody has put on the plat. No line on the water?

A. No; but can't go over anybody else's.

Q. Well, it is better over here?

A. Too deep to get anchorage.

Q. Mr. Barron, do you know anything about the bottom of this ground down there in front of this survey? A. I do.

Q. Well, let me ask you: isn't it a fact that it shelves off into deeper water where Mr.—east of Mr. Alexander's trap? A. Yes, sir.

Q. And isn't it a fact you could come in here pretty near any old time with the "Anna Barron," either come in this direction, up in this direction or this direction, could come in front of that survey at any time?

Mr. WINN.—If he would indicate so it will show on the record.

Mr. CHENEY.—I am not making a record.

COURT.—The only difficulty, Mr. Cheney, would be that the record won't mean anything.

Q. (By Mr. CHENEY.) Then, I will ask you, Mr. Barron, if you couldn't come in with the "Anna Barron"—if there would be anything to obstruct or interfere with the "Anna Barron's" coming in here in front of your homestead claim 804-B on the east end of the claim, in front of the eastern end of the claim?

A. She could come in there, but she would have to go outside the frontage to anchor, and if she came there, if the tide was sweeping in here, have to go

(Testimony of James T. Barron.)

clear out, probably, from that trap possibly 350 or 400 feet to anchor safely without [224] striking the trap, to give scope to the anchor. The trend of the tide here is—

Q. (By Mr. WINN.) Now, how did you say the trend of the tide? A. —sweep in there.

Q. Well, now they would sweep in from which side? If you will indicate?

A. From the southeast side.

Q. From Chatham Straits. Sweep in from Chatham Straits on the southeast side?

A. Well, it is—it sweeps in here and certainly from the tide-book runs about down here and a strong—what you call a strong flood tide—the flood tide comes in there. You have to go close out to 50 fathoms, 11 fathoms, but out here the deep water is you couldn't do that; your logs would swing; you would have to have about 700 or 800 feet.

Q. I didn't ask about any logs.

A. Even with a steamer have to go close to 11 fathoms of water at least. The chain will ride her 50 feet; the scope of your chain would have to be about six times it, that is about 500 feet of chain have to put out.

Q. (By Mr. CHENEY.) I will ask you the question again, Mr. Barron. You didn't answer it. I ask you now if there is anything to obstruct the "Anna Barron" coming in to—in front of this survey here—into this harbor on the east side of Mr. Alexander's trap and in front of the east end of sur-

(Testimony of James T. Barron.)

vey No. 804. Please answer the question when I get it.

Mr. WINN.—Now, wait a minute. I object to the question as indefinite and uncertain, and also for the reasons I have heretofore urged. If the Court please, I think that is the same. Mr. Cheney says, “Come in here.” Now, that don’t mean anything. If he would say you could come in to a wharf and reach this upland or make any use of it. No question could [225] land supplies there with a boat. The question is absolutely incomprehensible to the witness, I think.

Mr. JENNINGS.—Read the question again. I thought it was very comprehensive, not only; but clear enough for the record, if the Court please. Just read it again, Mr. Robertson, and let us see what it is.

Q. (Read by the Reporter.) I ask you now if there is anything to obstruct the “Anna Barron’s” coming in to—in front of this survey here—into this harbor on the east side of Mr. Alexander’s trap and in front of the east end of survey No. 804?

Mr. WINN.—Simply says—

Mr. JENNINGS.—Says come into this harbor on the east side of Mr. Alexander’s trap.

A. Come right up here and up here (indicating). No, sir, without piling up if the tide wasn’t swift enough to carry her away.

Q. (By Mr. CHENEY.) You understand the question?

A. I say could come in as far as the trap and tie to the trap stakes so far as that is concerned.

(Testimony of James T. Barron.)

Q. You could run clear through the trap if you wanted to. I didn't ask that question. This is Chatham Straits—all open, navigable water?

A. Yes, sir.

Q. Is there anything to prevent or obstruct the "Anna Barron" from coming into this harbor from an east—southeast direction down Chatham Straits on the east end of the survey, homestead survey?

A. No; I couldn't come there without going in front of the trap; wouldn't have room enough there.

Q. Wouldn't have room enough, Mr. Barron?

A. No. From the clear of the wharf have to have scope there unless get clear out back up to here for anchorage purposes. [226]

Q. What is the reason you couldn't anchor?

A. Well, because the water is too shallow; have to get out from the shore; they wouldn't anchor right close to the shore; want to have 400 or 500, 300 feet from shore anyhow.

Q. If the wind isn't blowing, couldn't she anchor?

A. Well, allow your boats to do it.

Q. Didn't you say the water is deeper over here, Mr. Barron, than it is along here?

A. Yes; but not over here so deep; right out here quite deep; quite possible if she comes this way she could.

Q. (By Mr. WINN.) Now, by that, where do you mean, Mr. Barron?

A. To anchor in front of our property have to come out to get away from that angle of the trap; have to go clear out from shore, so to anchor her and get

(Testimony of James T. Barron.)

scope; so as to turn with the tide; have to have swinging room; have to have your anchor about 100 feet at least; if there was 30 feet of water you would have to have about 150 feet of chain and water; the "Anna Barron" is 100 feet long, so have to have 500 feet of water to swing with safety or you couldn't go near the place—

Q. (By Mr. CHENEY.) The "Anna Barron," we will say, is 100 feet long and the chain 150 feet, that is 250 feet?

A. —and then as the tide changes—

Q. Swings around in a circle? A. Yes.

Q. But from the circumference to the center of the circle be 250 feet? A. Yes.

Q. When you say 500 feet, you mean from one side of the circle to the other? A. Yes.

Q. You don't mean have to lie off this trap 500 feet? [227] A. No; about 300 feet.

Q. 250?

A. Give her plenty of room. Depends entirely upon the depth of the water.

Q. Isn't it a fact, Mr. Barron, that the anchorage is better over here than it is over in here?

A. I don't think it is protected from the north wind.

Q. At this—in front of the east end of the survey isn't the anchorage better than at the west end?

A. I will get to it. No, sir; more protected too.

Q. From the north wind?

A. Yes; from the north wind, and that is the prevailing wind have to buck against in bringing our pil-

(Testimony of James T. Barron.)

ing home. The other winds—

Q. Well, I will ask you this, Mr. Barron, what do you—what do you talk about bringing piles into that harbor—what do you bring piles into that harbor for?

A. In case the north wind blows is a sort of harbor of refuge.

Q. In case of a north wind it is a refuge?

A. Yes; because they buck it.

Q. In case the north wind blows or in case of any other wind the harbor down at Hawk Inlet is better?

A. You pass the harbor there.

Q. How far is it from Hawk Inlet harbor to this little place?

A. Oh, I should judge six or seven miles.

Q. And Hawk Inlet, you said, was a good harbor?

A. It is with—certainly it is a good harbor. It is an inlet.

Q. It is a big harbor?

A. Yes; but you have to go in quite a little ways there and swing around, if it is late.

Q. Well, the "State of California" goes in there, doesn't it? [228]

A. Yes; but more out of your way. Have to go up the inlet.

Q. On the road to Funter Bay from Fresh Water Bay?

A. You go along that shore—the wind isn't so bad along the shore—takes quite a tremendous storm to prevent a boat towing logs up to this place.

Q. Then, Mr. Barron, if that wind is protected along that shore, what occasion have you to go in that harbor, this little cove?

(Testimony of James T. Barron.)

A. It is a natural cove there to anchor.

Q. If you have occasion to go in any harbor the Hawk Inlet harbor would be better than this place?

A. No; it is farther from the cannery.

Q. It is farther from the cannery?

A. Why, it is closer.

Q. You said only five or six miles.

A. Well, five or six miles towing of logs means an hour.

Q. Well, you are bringing these tows of logs clear across Chatham Straits from Chicagoff Island, aren't you?

A. Don't have to do that if the north wind isn't blowing.

Q. Don't have to do what?

A. If the north wind isn't blowing.

Q. If the north wind isn't blowing you come right up the Straits? A. Yes.

Q. Don't go in there at all? A. No.

Q. As a matter of fact, how many times do you suppose your "Anna Barron" or "Kodat" has been in there with a big tow of piles this last year?

A. Yes.

Q. Do you know they have been in there at all?

A. Yes.

Q. The last couple of years? A. Yes. [229]

Q. When were they in there with a tow of piles?

A. Why, I can't remember. I think so; I am pretty sure; the captain has told me of one occasion. I don't put those down or make a note of it.

Q. You never heard Captain Crockett or any other

(Testimony of James T. Barron.)

captain say that was a good harbor?

A. Oh, say a little harbor for the north wind.

Q. Never heard them say that? A. Oh, yes.

Q. But you never heard them make the statement, Mr. Barron, that was a good harbor?

A. Oh, I am satisfied I have. Of course, I can't recall the conversation but I know instances when he has been in there and I suppose he told me about. Wouldn't have gone in there unless it was.

Q. You are not prepared to state to the Court now when it was that any of your boats went into this little harbor with a tow of logs in the last two years?

A. Well, I am pretty sure Captain Mason has. Of course, last year we couldn't go in there because the trap was there and he couldn't get in.

Q. How many times do in the year before?

A. I don't know. I don't remember. I am not running the boat. I can't attempt to testify to that.

Q. No; but you have testified on direct examination that sometimes you used this as a harbor for your boats coming from Fresh Water Bay?

A. Yes, we have more than once, but how many times or what particular time it was, of course, I can't state.

Q. Now, Mr. Barron, when did you first know that Mr. Alexander was driving his trap out there or was going to? [230]

A. When I had a telegram or cable from—

Q. Mr. Barker? A. —from Mr. Barker.

Q. When was the date of that, do you know?

A. Some place in March. 13th, 14th or 15th of

(Testimony of James T. Barron.)

March, I think. I don't remember.

Q. Before that, wasn't it?

A. Well, I have not the dates with me. I don't know.

Q. You got a letter from Mr. Alexander there telling you about what he was going to do?

A. That was after Mr. Barker had seen him and notified him it was my location.

Mr. WINN.—That letter is here. He had a telegram from Barker on the 15th of March.

Mr. CHENEY.—I am not talking about letters, I am talking about cablegrams.

Q. You got a cablegram from Mr. Barker before that?

A. Yes; and the letter that Mr. Alexander wrote was after he was notified it was my location.

Q. But I am asking you when you got this telegram from Mr. Barker. Wasn't it about the 7th of March?

A. Well, whenever—whatever time it was when he notified Mr. Alexander that he was driving on our location and I had the upland.

Mr. WINN.—Don't you know those telegrams are on file here, Mr. Cheney?

Mr. CHENEY.—I know what telegrams I am talking about, Judge. I am not talking about those.

Q. You got a telegram from Mr. Barker about the first part of March—the 7th or 8th of March, didn't you?

A. I don't know really, Mr. Cheney, because I haven't kept those on my mind. I suppose that can

(Testimony of James T. Barron.)

be ascertained. I suppose [231] I can get the telegram in my records, but I don't know exactly when it was I received it. The first intimation I had was that Mr. Barker claimed that Mr. Alexander had started there to drive the location.

Q. And right after that you bought this from Mr. Robertson?

A. No, I beg your pardon. I had this long before. I had this paid for before the 8th of March. I thought it was the 1st of March.

Q. The deed is dated the 8th of March?

A. Before I had any intimation from Mr. Barker of Mr. Alexander's going there. I do remember it came like a thunder-bolt that we had been and he consulted me at once.

Q. You are sure you didn't know about Mr. Alexander's driving a trap before you bought this homestead property?

A. No; I told Mr. Barker I had secured the upland, not being in any hurry about doing anything as I had waited an entire year and for that reason he had no direct orders from me what to do.

Q. How many trap locations are you holding, Mr. Baron?

A. Well, I have driven a large number of locations. I have twelve.

Q. And how many do you claim you haven't driven?

A. Well, I have driven everything but two little locations, except I am driving that.

Q. Everything you claim is driven too?

(Testimony of James T. Barron.)

A. Yes; twelve and this location.

Q. I say every trap location you claim is driven now except two?

A. Oh, no; there was one I tried to drive last year and couldn't make it stick, and that has never been finished. Couldn't finish it.

Q. Yes.

A. But, of course, have one or two piles up simply to flank our trap, but never intended to drive and in fact couldn't drive [232] a trap.

Q. You haven't tried to hold them with piles?

A. I have never put a single pile excepting last fall when we expected to get two little traps that I wanted to protect my other trap—I have confined myself right to my own district; never attempted to go outside the district.

Q. How many homestead locations have you on the upland above your traps?

Mr. WINN.—Object—incompetent, irrelevant and immaterial.

COURT.—I don't see that is material, Mr. Cheney.

Mr. CHENEY.—Well, it wouldn't be material probably, but counsel has said so much about the good faith of the plaintiff in this case in his argument.

WITNESS.—Good faith; I never had anything but good faith in my life.

COURT.—The good faith of the plaintiff, Mr. Cheney, will have to be determined by his actions in relation to this particular trap in controversy.

Mr. CHENEY.—Yes, but counsel stated in his

(Testimony of James T. Barron.)

opening of this case that he didn't think the intention of Mr. Barron as to what he is going to do with this land or what he is doing with the fish business, and so forth, had anything to do with this case. That is his statement to the Court, and now he attempts to introduce in evidence as to what Mr. Barron and the Thlinket Packing Company are doing with this upland.

COURT.—Yes, with this particular trap, but he hasn't asked him what he intended to do with any other than the particular trap.

Mr. CHENEY.—No; that is true.

COURT.—No. I think we ought to confine our examination in this to that. [233]

Mr. CHENEY.—Might be material to know what his intention was in getting this upland.

Mr. WINN.—That is for the Land Office.

Mr. CHENEY.—I don't think myself his intention or what he is going to do with this land has anything to do with it.

COURT.—I have excluded any testimony as to what Mr. Barron intends to do with this particular tract. The testimony then to it is excluded—his testimony concerning any other tract. Any further cross-examination, gentlemen?

Mr. CHENEY.—Just a moment, if your Honor please. I believe that is all.

Mr. JENNINGS.—I want to ask him some questions. I know it is a little irregular, if the Court please.

Mr. WINN.—No objection.

(Testimony of James T. Barron.)

Mr. JENNINGS.—Trying the case on the merits.

COURT.—All right.

Q. (By Mr. JENNINGS.) Now, Mr. Barron, you say that it would to put that fish-trap there would interfere with safe anchorage—the safety of anchorage of vessels going in there, particularly the “Anna Barron,” and that constitutes a menace to navigation. Is that your statement?

A. At the present time with the present trap; yes.

Q. That vessels can't go in there out of storms—out of a storm? A. Not, with the—

Q. No place to run in to?

A. Not with the piling like we have to tow, that is why we go in there for.

Q. Yes. Couldn't get in there. Neither the “Anna Barron,” nor vessels that you tow, or any other vessels; no vessel could get in there? [234]

A. Not with a tow; no.

Q. Now, that is your principal objection to this trap, isn't it?

A. Well, I have got the upland. I don't want it turned off.

Q. That is your principal objection to this trap, isn't it?

A. Well, I can't understand your question.

Q. What?

COURT.—He says he can't understand your question.

WITNESS.—I can't understand.

COURT.—The question is—counsel asks you if that is your principal objection to the trap.